BOOK II

MIMANSA

RULES OF INTERPRETATION

THE MIMANSA RULES OF INTERPRETATION

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CHAPTER I

INTRODUCTION



SECTION 1. PRELIMINARY

Mimansa मीमांसा.—Its root is मान् पूजायाम् and its Sutra as given by Panini पाणिनि is मानेर्जिज्ञासायाम् (सन् प्रत्ययः) । So the meaning of the term Mimansa is जिज्ञासा पदस्य विचारे लक्षणः । Jijnasa means 'desire to know'; the inevitable result of the desire would be विचार or thought. The question arises as to what should be thought of, or what knowledge is to be acquired? The answer is: *Dharma*. Dharma has been defined to be यागादिरेव धर्मः, that is, Yajna is our Dharma as described in the Vedas. Mimansa Shastra, therefore, means the rules and principles conducive to the search of the knowledge of Dharma, or in other words, the principles of the interpretation of the Vedas.

Importance of the subject.

The Mimansa Rules of Interpretation, or the Rules of Interpretation in Hindu Law with special reference to Mimansa aphorisms (as applied to Hindu Law) will be dealt with in this Book. Rules of interpretation possess an importance of their own in Hindu Law, greater than found in the law of any other country, as is evident from Kulluka's commentary on Sloka 1, Ch. I. विरोधिबौद्धादितर्कैर्न हन्तव्यानि अनुकूलस्तु मीमांसादितर्कः प्रवर्तनीय एव, and also from that of Medhatithi on Sloka 1. Ch. II. एतच्च मीमांसातस्तत्त्वतो निश्चीयते, that spirit and essence of the Mimansa should be adhered to though contrary to Buddhistic principles. The proper way of expounding Manu's Smriti and the rest is by applying the Mimansa rules interpreting them, and not the iconoclastic rules of the free-thinkers. Hindu Law has always been attached to its rules of interpretation.

In case of dependence of law on State, the supreme authority of the State prevails either in the form of legislation or in that of the pronouncement of judges having ultimate jurisdiction. But when the law is deduced and derived from religious works, to whose authority people implicitly submit, and when the administration of law is entrusted to men learned in religious books, as in the case of Hindu Law, the necessity of fixed rules of interpretation arises as a matter of course,

and assumes a very great importance. State-made law can change with the times, but not so the canonical law like the one we are dealing with. In this case the words of law remain unchanged for all time to come and may either stand in the way of social growth or may themselves become out of date with the growth of ideas and development of new situations in a growing society. The Hindu law-givers foresaw the dangers both of a static law as also of ever-changing enactments. They struck a mean between the two by laying down elastic rules of interpretation to meet the exigencies of all times and occasions, and thus provided for automatic evolution of law with the progress of society.

Position of the subject.

The subject of interpretation of law does not occupy so important a place among modern jurists as it did amongst the Hindu jurists in ancient days, though it has always been an important branch of what is called the "adjective law." The courts have to deal with three things: (1) laws dealing with rights and liabilities, (2) facts which establish such rights and liabilities in particular cases, and (3) the machinery of administering the law and of ascertaining facts. The last one is of an incidental character, and nothing particular may be said about it. The second mostly concerns the parties claiming a right or imposing a liability, and the law of Evidence would assist the courts in the performance of their duties. Thus the most important function of the administration of justice lies in the ascertainment of rights or liabilities and in dealing with the substantive law of the State, thus making it imperative to invoke the aid of the law of interpretation. So, this subject stands side by side with the rules of evidence and procedure. But no importance has been attached to this difficult branch of law—Mimansa. It may be said that judges know how to interpret the law, but this may be equally said of the rules of evidence and procedure. There is no doubt that a well-trained judge may arrive at a proper construction of a text of law without the help of any formal rule of interpretation. But this does not imply that rules of interpretation are unnecessary.

Difficulties as regards the subject.

The interpretation of Hindu Law is beset with serious and numerous difficulties. Judges not familiar with Hindu thoughts and imbued with foreign ideas of jurisprudence not unoften err in the application of these principles. The existence of a mass of precedents based on alien principles of jurisprudence creates another difficulty. The neglect of Sanskrit study and research, which alone can bring to light the correct rules of interpretation to be applied to Hindu Law has caused still a third difficulty.

Observations of: (1) Sir John Edge, C. J.

The following observation of Sir John Edge on this subject is noteworthy:—

"The question is how is the text of Vashishtha to be construed. It must clearly be construed according to the rules for the construction of the texts of the sacred books of the Hindu Law, if authoritative rules on the subject exist. That rules for the construction of sacred texts and law of the Hindus do exist cannot be disputed, although those rules have been frequently overlooked or not referred to by judges or English text writers, probably because they are in Sanskrit and have, so far as I am aware, not yet been translated. That they are rules of the highest authority is obvious from the manner in which they have been referred to by Mr. Colebrooke."(a)

(2) Colebrooke.

The following passage from Colebrooke's Miscellaneous Essays [Vol. I, p. 342] shows the importance he attached to the Mimansa Aphorisms for the interpretation of Hindu Law:—

" A case is proposed either specified in Jaimini's text or supplied by his *scholiasts*. Upon this a doubt or question is raised, and a solution of it is suggested, which is refuted and a right conclusion established in its stead. The disquisitions of the Mimansa bear, therefore, a certain resemblance to judicial questions; and, in fact, the Hindu Law being blended with the religion of the people, the same modes of reasoning are applicable, and are applied to the one as to the other. *The logic of the Mimansa is the logic of the law*—the rule of interpretation of civil and religious ordinances. Each case is examined and determined upon general principles; and from the cases decided the principles may be collected. A well-ordered arrangement of them would constitute the philosophy of the law, and this is, in truth, that has been attempted in the Mimansa."

(3) Prof. Max Muller.

Professor Max Muller in his learned treatise on the Six Systems of Indian Philosophy observes as regards the Mimansa Shastras:

" We may wonder why Purva-Mimansa should ever have been raised to the rank of a philosophical system by the side of the Uttara-Mimansa or the Vedanta, but it is its method rather than the matter to which it applied that seems to have invested it with a certain importance. This Mimansa method of discussing questions has been adopted in other branches of learning also, for instance, by the highest legal authorities, in trying to settle contested questions of law. We meet with it in other systems of philosophy also as the recognised method of discussing various opinions before arriving at a final conclusion."

(a) 14 All. 70.

(4) Dr. Thibaut.

In the translation of Artha Sangraha, Dr. Thibaut in his Introduction observes as follows:—

"The Mimansa certainly deserves greater attention than it has hitherto received. It has indeed none of the attractions which the other Darsanas derive from the speculative character of their contents; its scope is limited and the nature of the investigations in which it is engaged leaves no room for high flights of imagination. But it possesses counterbalancing advantages. Its subject-matter is of a positive nature, its method is sound and its reasoning in most cases convincing."

Mode of treatment of the subject.

Mimansa rules generally occur incidentally with reference to the treatment of substantive law on the lines adopted by particular writers. They mostly bear on isolated points and are not of much general interest or utility. But they sometimes purport expressly to be the reproduction of some one or other of the Mimansa principles of interpretation.

General principles systematised.

Therefore, the Mimansa Principles of Interpretation which form a systematic code of rules on the subject of interpretation with special reference to the Mimansa aphorisms, are of immense benefit for the study of Hindu Law. It is very difficult to modernise the effect and purpose of the aphorisms which came into existence in the earliest times when the present modern principles of interpretation were unknown. Savaraswami and Kumarila Bhatta, the great commentators on Aphorisms would have made this task easier, had they not confined the subject mostly to the religious and metaphysical questions arising out of the subject interpreted by Jaimini. The latter and more recent commentators, such as, Langakshi Bhaskar and Apadeva have been greatly useful in modernising this subject.

Axioms and the principles of construction.

A distinction has been made between the elementary rules in the nature of axioms as contradistinguished from rules (and principles, more or less of a complex character. Mimansa writers have called the former as axioms of interpretation and the latter as general principles of interpretation. Another distinction has also been observed in the application of texts, that is, whether a given text is intended to lay down a positive rule of law or a rule of discretion; to what persons or classes of persons it would apply; how it would bear on other texts and how it should be modified when so bearing on other texts, as distinguished from the interpretation of texts, and how the meaning and the force of the words of a text are to be made out. The former is a matter which is more or less extraneous to the text, showing how and for what

purposes the text is intended to be applied.

These distinctions are not observed in the modern system of the law of interpretation. In every country there is a class of law springing from customs and usages, sometimes called the Common Law. In Hindu Law the Smritis are regarded as such, while the law itself is contained in the Vedas. Additional rules of interpretation are, therefore, essential for the construction of this class of law, *viz.*, the Smritis which is the main body of Hindu Law, if not the sole body. The Mimansakas have, therefore, formulated a number of general rules for the interpretation of the Smritis and the Hindu Law of usage besides their rules for the interpretation of the Vedic law.

Mimansa Nyayas or maxims.

The Mimansa Nyayas or the specific principles of Mimansa called Nyayas have also been fully discussed by our Mimansakas. Nyayas or Maxims are in some cases equivalent to the head-notes of a case, containing the result of a discussion, for and against, on a given point. In other cases they are either the current expression of a happy humour or of a thoughtful conclusion called Laukika Nyayas or popular maxims. They may relate to different purposes—to the meaning of words or sentences in general or to negative texts, known as Vidhis. A distinction has been made between Pratishedha from which arise considerations of contradiction, and Paryudasa giving rise to provisos and exceptions. Badha is a particular form of contradiction. It explains one text nullifying another. The cases of conflict between the letters of the Smriti law and the Arthashastra have also been clearly dealt with.

Mimansa rules never a dead letter.

The history of the successive development and the vicissitudes through which the Hindu Law had to pass, shows that the duty of interpreting it was always in the hands of learned Brahmans, well-versed in law and Mimansa. The law was always independent of the State. Even during the Muslim rule or the present British Government it retained, more or less, its independent character. So the Mimansa rules have never been a dead letter.

Vedic origin of the subject.

The Mimansa Rules of Interpretation like every other branch of knowledge among the Hindus, owe their origin and development to the study of the Vedas; the Kalpa and Nirukta dealt with the questions of interpretation. The Kalpa Sutras, also known as the Prayoga Sutras (rules of application), serve mostly as the rules of interpretation, such as the Sutras of Ashwalayana, Apastamba and others. Jaimini, the author of the Mimansa aphorisms, does not admit their authority and takes exception to them on the ground "that they have no system in them,"

असन्नियमात् (I. iii, 12) and further that they are not the sequence of Srutivakyas (Vedic propositions) अवाक्यशेषात् (I. iii, 13).

Mimansa different from Hermeneutics but identical with judicial principles of interpretation.

The Mimansa system of interpreting the Vedas is not like Hermeneutics, the system of interpreting the Bible as adopted by Christian Theologists. The difference is this: The interpreters of the Bible do not so much look to its words for interpretation as to the supreme moral force from which they proceeded. They go beyond the actual words to elicit their meaning and purpose. The Mimansakas, on the other hand, start with the words, and then follow up the consequences. The Mimansa system is thus the mode of the study of judicial principles of interpretation.

Modern treatment of the subject.

The book which is now regarded as an authority on the law of interpretation is that of Sir Peter Benson Maxwell. It shows that much work has to be done before the subject can assume a systematic scientific shape. The following is the opening section of this work: "A statute is the Will of the Legislature; and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded 'according to the intent of them that made it.' The object of all interpretation of it is to determine what intention is conveyed, either expressly or by implication, by the language used, so far as it is necessary for determining whether the particular case or state of facts presented to the interpreter falls within it. When the intention is expressed, the task is of verbal construction only; but when the statute expresses no intention on a question to which it gives rise, and yet some intention must necessarily be imputed to the Legislature regarding it, the interpreter has to determine it by inference grounded on certain legal principles. The act, for instance, which imposes a penalty, recoverable summarily on every tradesman, labourer or another person who carries on his worldly calling on a Sunday, would give rise to a question of the former kind, when it had to be determined whether the class of persons to which the accused belonged was comprised in the prohibition. But two other questions arise out of the prohibition: is the offender indictable as well as punishable summarily? And is the validity of a contract entered into in contravention of the Act, affected by it? On these corollaries or necessary inferences from its enactment, the Legislature, though silent, must nevertheless be held to have entertained some intention, and the interpreter is bound to determine what it was."

"The subject of the interpretation of a statute seems thus to fall under two general heads: what are the principles which govern the construction of the language of an Act of Parliament; and next, what are those which guide the interpreter in gathering the intention on those incidental points on which the Legislature is necessarily presumed to have entertained one, but on which it has not expressed any."

Two cardinal questions.

The two questions above referred to may be summed up thus:

(1) What is the meaning and sense of a particular word, sentence or passage in a book of law as intended by the Legislature?

(2) Whether it constitutes an obligatory side, a quasi-obligatory rule, or a non-obligatory matter in cases where the intention and meaning are not sufficiently explicit.

Maxwell first of all treats with what is called the *Literal Construction.* He explains it thus:

"The first and most elementary rule of Construction is that it is to be assumed that the words and phrases are used in their technical meaning, if they have acquired one, and in their popular meaning, if they have not, and that the phrases and sentences are to be construed according to the rules of grammar; and from this presumption it is not allowable to depart where the language admits of no other meaning; nor where it is susceptible of another meaning, unless adequate grounds are found, either in the history or cause of the enactment or in the context or in the consequences which would result from the literal interpretation, for concluding that that interpretation does not give the real intention of the Legislature. If there is nothing to modify, nothing to alter, nothing to qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences."

Four principles deduced.

The following four guiding principles can, therefore, be deduced:—

I. That the words and sentences of a statute must be construed in their natural and ordinary meaning, unless there be something to modify, to alter or to qualify that meaning.

II. That the natural and ordinary meaning is the popular meaning, unless the word or phrase has acquired a technical meaning thoroughly understood by those conversant with the subject.

III. That phrases and sentences must conform to the rules of grammar for their interpretation.

IV. That only when adequate grounds are found, either in the history or cause of the enactment or in the context or in the consequences which would result from the literal construction, for

concluding that the ordinary and natural meaning does not give the real intention of the Legislature, that meaning may be departed from.

The equivalents or the counterparts of these four rules do exist in our Mimansa Shastra and are called (1) principle of the *Sruti*, (2) that of *Linga*, (3) that of *Vakya* and (4) that of *Prakarana* (Jaimini III. iii. 14).

Similar rules in the Mimansa Shastra.

(1) The **principle of the Sruti** is that when a sentence is complete and explicit in sense and grammar, no attempt should be made to strain or twist its meaning.

(2) The **principle of Linga** is that when a word or expression has more than one meaning, and the natural or ordinary meaning of a word or expression does not harmonize with the text, its technical sense is to be determined by the context or by reference to other parts of the subject.

(3) The **principle of Vakya** is that where words and sentences are not connected in an explicit manner, they should be joined grammatically, so as to make a sensible proposition.

(4) The **principle of Prakarana** is that when a sentence or clause makes no complete sense by itself, however clear its meaning and grammatical composition might be, it should be read into or with some other passage with which it coalesces according to the nature of the whole subject.

Maxwell has, therefore, broken no new ground, and the rules contained in his book are all to be found in the Mimansa Shastra. These general rules will not be of much use unless accompanied by illustrative cases. Importance is all the more enhanced because of the fact that it is very difficult in doubtful cases to distinguish whether the circumstances of a passage justify the one or any other mode of interpretation as given above. The Mimansa gives illustrative cases also and they are called **Nyayas** or **Adhikaranas**. The English system of construction also deals with illustrative cases, which are the main objects and functions of the law of construction.

Necessity of illustrative cases.

Besides illustrative cases, which play a very prominent part in the law of interpretation, certain principles of an elementary or axiomatic character affecting interpretation are also of much importance. One of them is that a law-maker can never use a word or sentence without any purpose or meaning, so it is laid down that "A statute ought to be so construed, that if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant." Thus superfluity can not be deemed to exist. The

Axioms.

Presumption against superfluity.

corresponding rule exists in the Mimansa called **Anarthakya** (attributing meaninglessness).

Presumption against contradiction.

Another axiom which is of general importance is that contradictions should not be too easily assumed, and the interpretation should harmonize one provision with another. The Mimansa writers hold that in case of a direct and clear conflict between two texts, the result is that the binding effect of both is neutralised, and one is left to accept either at one's option (**Vikalpa**). Such a disastrous result should not be allowed, if there be any means left open to reconcile the texts.

SECTION 2. APPLICATION OF MIMANSA RULES TO THE POSITIVE SMRITI LAW

Origin and nature of Mimansa rules.

The main portion of the rules of interpretation is contained in the Mimansa Sutras. Their commentators were not lawyers, and they generally applied those Sutras to solve difficulties presented by the sacred law—the Vedas. So their works have the resemblance of religious treatises. The rules and principles of interpretation laid down in the Sutras are like the rules of grammar. As the rules of grammar when applied to a poetical work do not lose their force when applied to prose, so the rules of interpretation applied to the Vedas would not become of less import by applying them to questions of civil law. In fact they have a dual aspect.

The following passage from Thibaut's Introduction to the translation of the Artha Samgraha shows the difficult nature of the Mimansa rules as well as of their interpretation :

" The fact that throughout the Mantras accompanying a certain sacrifice are combined in separate sections apart from those chapters which contain the corresponding Brahmana, is in itself a source of frequent perplexity. Again it often happens that there is an apparent contradiction between two passages referring to the same matter, as when, for instance, the Brahmana-passage maintains that from out of a series of sacrificial acts a certain one is to be performed in the sixth place, while in the section which contains the Mantras accompanying the series of acts the Mantra referring to the particular act mentioned occupies the tenth place.—Or again we find that, of two actions referring to the same thing, the one which according to the exigencies of the case must be performed in the second place is in the sacred text enjoined before the other one.—Or again the reader of the Veda may be in doubt as to whom a certain injunction contained in the Veda is addressed, what kind of man, in other words, is entitled to perform the sacrifice enjoined and in return to expect the result promised in the Veda.—Or

again we meet in the Veda with passages regarding which a *prima facie* doubt arises whether they enjoin an independent sacrifice to be performed from a special motive and attended by a special result or perhaps merely a subordinate sacrificial act which contributes its limited share towards the successful performance of one of the well-known great sacrifices.—Or again—and this must have been a point whose consideration very frequently pressed itself on the Brahmins at a time when the various sacrifices mentioned in the Veda were in reality regularly performed—it becomes a matter for reflection and doubt in what manner one has to perform the very numerous so-called Vikritis, *i. e.*, the sacrifices which are mere modifications of the few typical sacrifices and which as such the Veda does not describe in detail.—It would be useless here to continue the enumeration of difficult cases of this nature."

Distinguished Hindu lawyers' judicial application of Mimansa.

The distinguished Hindu lawyers, one and all, make use of the principles and rules of the Mimansa Shastra in dealing with their subjects. They treat these rules as authoritative in settling disputed points and in supporting their conclusions. The ways in which they apply the Mimansa maxims show how those maxims, though directed to interpret the Vedic texts, fully apply to the texts of law contained in the Smritis. These matters will be taken up in detail hereafter. At present it may be said that Vijnaneshwara, the author of the Mitakshara, made clear the fundamental principle of his work, *viz.*, the principle that property is temporal by making use of Jaimini's Sutras. Jimutavahana, the author of the Dayabhaga follows the Mimansa principles in discussing the fundamental doctrine of his work, regarding the absolute disposing power of the father or a co-parcener over property possessed by him. Nilkantha, the author of the Vyavahara Mayukha, while discussing whether the king has any right of property in the lands forming his territory, strongly held that he had none on the basis of the *Sarvadakshina* maxim of Mimansa. Medhatithi's commentary of Manu, which is one of the principal factors in developing the jurisprudence of India abounds, more than any other law-book, in Mimansa terms and dissertations. Kulluka, the famous commentator of Manu whose work is characterised by Sir W. Jones as the 'shortest, yet the most luminous, the deepest, yet the most agreeable commentary ever composed by any author ancient or modern, European or Asiatic,' disapproves the method of interpreting the sacred text in the light of the iconoclastic reasonings of the Buddhists and the like, and says that the approved method of interpretation is to follow the Mimansa principles. There is also a

passage in Mahabharata :

"The Puranas, Manava Dharma, the Vedas with Angas and the Medical Science, these four are established by the authority of command and are not to be upset by the authority of reasoning.'

पुराणं मानवो धर्म्मः साङ्गोवेदाश्चिकित्सितः ।
आज्ञासिद्धानि चत्वारि न हन्तव्यानि हेतुभिः ॥

Kulluka remarks as to the meaning of this passage : **विरोधि वौद्धादितर्कैर्न हन्तव्यानि, अनुकुलस्तु मीमांसादितर्कः प्रवर्त्तनीय एव ।**

Raghunandana's works on Smrititattva, such as, Ekadashitattva, Malamasatattva, Suddhitattva, Udbhavatattva, *etc.*, are full of Mimansa references. Apastamba and Baudhayana have also made use of Mimansa principles, specially in connection with giving the eldest son a larger share of the inheritance, which was a question on which they differed, though they referred to the same Sruti. Vashishtha and Yajnavalkya also have made a mention of the Mimansa rules at numerous places.

SECTION 3. MIMANSA PHILOSOPHY AND MIMANSA LITERATURE

Mimansa philosophy.

The philosophy of the Mimansakas is nothing but the philosophy of words as contained in Sutra 5: "Eternal is the concomitancy between the word (of command) and its purpose. The means of knowing this eternal concomitancy is the teaching (revelation) which is unfailing in leading to transcendental effects (eternal bliss) and is irrespective of anything else as Badarayana has mentioned it." This Sutra has been construed differently by two schools. One is the conservative school of Savara Swami, Kumarila and others, while the other is the rational school of Guru Prabhakar. The treatment of the former is too abstruse to follow, while that of the latter as explained in Prakarana Panchika by Kalinath Misra is easy and interesting. Prabhakar explains that a word is the embodiment of the impress of a will power directed to a particular purpose; so the word conveys the purpose as its necessary concomitant. 'In the case of the fluctuating will of man, the purpose or the meaning of words may vary. But in the case of the Eternal Will impressed upon the words of the Vedas, the words convey eternal truths producing transcendental effects. This is the philosophy proper of the Mimansakas. But it is often extended to the Metaphysics of Karma, which means that there is an unfailing sequence of deeds.' (*x*) Some attribute an atheistic character to the Mimansa philosophy,

(*x*) Kishori Lal Sarkar's Mimansa Rules of Interpretation, 508.

but the fact that a belief in the existence of a supreme power is the backbone of both the schools belies the presumption.

Some form of expression is essential for the conception of a definite idea or thought in the mind to communicate it and to make it realistic So the first impression in the Supreme Mind regarding this Universe would be: "The Word is Brahma." The same conception is to be found in the Bible: "In the beginning was the Word, the Word was with God, the Word was God." 'The Mimansakas say that Devatas (gods) expressed by such words as Agni, Marut, Varuna *etc.*, were not existing personal deities to whom these names were given, but that they come into existence with the application of the will force (Mantra) embodied in the words, for will force embodied in words generates existence. The Law of Karma is understood in the light of the same principle of faith. Will power as embodied in a particular deed never exhausts itself It transmigrates from the shape of one action into another, until there is salvation by Sadhana (religious purification).' (p. 509).

Mimansa literature.

Dr. Ballantyne's observation on the Sutra literature may appropriately be cited here :—

"The great body of Hindu Philosophy is based upon six sets of very concise Aphorisms. Without a commentary the Aphorisms are scarcely intelligible, they being designed not so much to communicate the doctrine of the particular school as to aid, by the briefest possible suggestions, the memory of him to whom the doctrine shall have been already communicated. To this end they are admirably adopted; and, this being their end, the obscurity which must needs attach to them in the eyes of the uninstructed, is not chargeable upon them as a fault."

Style of the Sutras.

Some of the Sutras may be unintelligible without the aid of the commentaries, but they are so constituted that they form one connected idea from the beginning to the end. The reading of an isolated Sutra without any reference to what precedes or what follows may not be comprehensive, but when studied in the light of each other or in concordance *i.e.*, with Sangati, no such difficulty will arise, as their language is plain, and the terms used have an ordinary sense.

Their classification by Jaimini.

Jaimini has classified them thus: (1) Sutras enunciating general principles, (2) Sutras which expressly refer to particular texts of the Vedas with regard to some one or more points requiring interpretation in such texts. Hence they could only be presented in the shape of illustrations.

It is very difficult to fix any age when Jaimini, the founder of

Age of Jaimini. the Mimansa system, lived and worked. The following facts may prove to be helpful in this connection :—

(1) "The term Mimansaka occurs in Mahabhashya. It is very probable that this refers to the subject of the Purva Mimansa, as the term also occurs there in contradiction to *Auktika* (Sec. I. St. xiii, 455, 466).

(2) Though the name of Jaimini is mentioned in the Puranas as the revealer of the Sama Veda, there is no mention of his name in the Vedic literature.

(3) Though the word Jaimini is irregularly formed, it is not mentioned in Panini or the Mahabhashya.

(4) Panchatantra, the date of which is more or less ascertainable, mentions Jaimini as the author of Mimansa.

(5) The names of many teachers are mentioned in Jaimini Sutras, as for example, Badari, Badarayana, Lalukayana, Aitisayana. The names of some of these are found in works such as Trittriya Pratisakkya, the Srauta-sutra of Katyayana, Kaushitaki Brahmana, Brahma-Mimansa-Sutra.

(6) The leading commentator of Jaimini is Savara Swami, whose work again is the subject of Kumarila Bhatta's commentary. The commentary of Savara Swami is cited by Sankara in Vedanta-Sutra-Bhasthiya III, iii, 53, and Kumarila Bhatta has been identified by the scholiast of the Prabodha-Chandrodaya with Tantatita.

(7) Mimansa Sutras are mentioned by Bhartrihari, whose date of death has been ascertained to be 650 A. D.

(8) The fact is ascribed to Jaimini that he has made certain Sutras simply relating to the interpretation of certain Mlechchha words, as Pika, Tamarasa, Nema, *etc.*

(9) The mention of the Mimansa in the Yajnavalkya Samhita."

K L. Sarkar (p. 511.). the learned Tagore Law Professor, concludes from these facts that when Jaimini's Sutras were composed no Smriti works in any elaborate shape existed, and the Aphorisms must be deemed to date before the metrical works of Manu and the rest came into existence ; they certainly precede most of the Pauranic works. There is nothing clear to enable a comparison between Jaimini's time and that of Panini. No doubt Jaimini's followers made use of the grammatical doctrines of Panini, but he did not do so ; therefore, nothing can be said with certainty. Besides, the Sutras abound in peculiar grammatical doctrines different from those of Panini.

In *Beni Prasad* v. *Hardai Bibi* (14 All. 67) their Lordships of the Allahabad High Court held that Jaimini lived in the thirteenth century

of the Christian era and that he was subsequent in date to the Mitakshara. This view is manifestly incorrect. According to Colebrooke, Bhagawan Upavarsha was the first annotator of Jaimini's work Savara Swami followed next. Sankaracharyya, who is believed to have lived about 900 A D. cites Savara Swami. So the Sutras must have existed before 650 A.D., as they are mentioned by Bhartrihari, the date of whose death is believed to be 650 A. D. Moreover, the life of Buddha Deva shows that he studied the six systems of philosophy including Jaimini's systems. So Jaimini must have lived before him.

The chief followers of Jaimini's Mimansa system are as follows :

1. Bhagawana Upavarsha.

Bhagawana Upavarsha has been proved to be the first commentator of Jaimini's system, so Colebrooke calls him Jaimini's scholiast. He selected all the difficult, abstruse and unintelligible passages from the Vedas and placed them under the different Sutras of Jaimini, rendering the meaning and sense of his Sutras clear. This process simplified the Sutras, and he thus rendered a great service to the Vedic literature.

2. Savara Swami.

Savara Swami prepared an elaborate commentary on Jaimini's Sutras. His discussions may be classified under two heads :

(1) The explanation of the general principles enunciated by Jaimini. (2) A thorough disquisition from every point of view of the texts either referred to by Jaimini or introduced by Bhagawana Upavarsha.

There are two editions of his work, one by Pandit Jivananda Vidyasagara and the other by Pandit Mahesh Chandra Nyayaratna.

3. Kumarila Bhatta

Kumarila Bhatta was the first to systematise the general principles of the Mimansa Sutras with a view to solving practical questions of interpretation, such as distinctions between Vidhi, Niyama and Parisankhya. He composed metrical couplets or Slokas containing the general principles of Jaimini's work. which are now known as Bhatta's Padas. His great work is divided into three books. The first contains a metrical exposition of the first chapter of Jaimini's Book I, dealing with the philosophical portion of his Sutras. It is named Sloka Vartika. The second gives the explanation of the Sutras, partly in verse and partly in prose, mostly on the lines of Savara from the beginning of the second chapter of Book I to the end of Book III. This book is called Tantravarttika.

The third follows up the Sutras from the beginning of Jaimini's Book IV to the end of the work. It is in prose and is called Tuptika.

Colebrooke's Miscellaneous Essays (Vol. I, p. 323) contains the following comment on Bhatta's work :—

"Kumarila Bhatta figures greatly in the traditionary religious history of India. He was the predecessor of Sankaracharya and equally rigid in maintaining the orthodox faith against heretics, who reject the authority of the Vedas. He is considered to have been the chief antagonist of the sect of Buddha and to have instigated an exterminating persecution of that heresy. He does, indeed, take every occasion of converting the authority and doctrine of Sakya or Buddha, as well as Arhat or Jina together, with obscurer heretics Baudhayana and Masaka; and he denies them any consideration, even when they do concur upon any point with the Vedas. The age of Kumarila, anterior to Sankara and corresponding with the period (299) of the persecution of the Buddhas, goes back to an antiquity of much more than a thousand years. He is reputed to have been contemporary with Sudhanwa, but the chronology of that prince's reign is not accurately determined."

4. Guru Prabhakara.

Guru Prabhakara is the reputed rival of Bhatta. His work is Prakarana Panchika, which is a philosophical treatise and has nothing to do with the principles of construction. He differed with Bhatta, but the difference was mostly on philosophical doctrines and not on the rules of interpretation.

5. Madhava Acharya.

Madhava Acharya's great work—the Nyaya-Mala-Vistara, which was printed by Theodore Goldstucker in 1865, contains an enumeration of Nyayas, their substance being reduced to Slokas or metrical forms. In each Adhikarana he shows some general principle as applied to a particular Vedic text which Bhatta chose to adopt, out of the various texts shown in Savara Swami's commentary. The account of his life has been given by Colebrooke thus :—

"Madhava Acharya was both priest and minister, or civil as well as spiritual adviser of Bukka Raya and Harihara, sovereigns of Vidyanagara on the Godavari (A. D. 1336), as his father Mayana had been of their father and predecessor Sangama, who ruled over the whole Peninsula of India."

6. Partha Sarathi Misra.

Partha Sarathi is the annotator of Kumarila Bhatta's works as Kumarila Bhatta is that of Savara Swami. His commentary on Kumarila's Sloka Vartika is known as Nyaya-Ratnakara. Another work of his is Shastra Dipika, which purports to be an original commentary on Jaimini's Sutras, but in reality it is a digest of Kumarila Bhatta's views.

7. Khandadeva.

Khandadeva, a follower of Bhatta's school, gave a clear exposition of the Sutras in his work called Mimansa Kaustubha, the second chapter of which deals very nicely with Arthavadas. Bhatta Dipika is also a comprehensive work of this Mimansist, in which he has reviewed the views of Partha Sarathi Misra and Madhavacharya. His another work, Bhattarahasyam, treats in detail with the grammatical principles of construction taught by Bhatta.

8. Gaga Bhatta.

Gaga Bhatta's illustrious work is Bhatta Chintamani, a section of which is Tarkapada, which is a very valuable treatise on the Mimansa literature, and explains many of the chief Bhattapadas, the most important being on Vidhi, Niyama and Parisankhya.

9. Somanatha.

Somanatha's work is Mayukhamala, which is a gloss on Shastra Dipika by Partha Sarathi Misra.

10. Raghavananda.

Raghavananda's work is Nyayavali Didhiti, giving a vivid interpretation of the Jaimini Sutra.

11. Vedantadesika.

Vedantadesika's work is known as Mimansa Paduka, a short work in Sragdhara metre. Another work of his is Sheswara Mimansa, in which he attempted to reconcile the Jaimini Sutras with the Vedanta Sutras.

12. Appa Dikshita.

Appa Dikshita's famous work is Vidhirasayana, which nicely deals with the classification of Vidhis.

13. Bhatta Sankara.

Bhatta Sankara, the father of Nilkantha, produced Mimansa-Bala-Prakash, which illustrates the Sutras, classifies their contents and deals with the subject of] Badha in a very practical way. His other work Mimansa-Sara-Sangraha, which is a synopsis of the Sutras is a nice little compendium.

14. Narayanatirthamuni.

Narayanatirthamuni's work Bhatta-Bhasha-Prakasa is another useful book on Sutras.

15. Rameshwara Suri.

Rameshwara Suri's work is Subodhini, which is one edition of the Sutras with short notes.

16. Udichya Bhattacharya.

His well-known work is Adhikarana Kaumudi containing the exposition of a number of useful Adhikaranas or Nyayas.

17. Laugakshi Bhaskara.

His famous work is the Artha Samgraha, and that of his father, Bhabana-Samgraha and Bhabakalpa-lata.

His valuable work is the Mimansa Nyaya-Prakasha. He produced a number of Mimansa works, such as Mimansa-Nyaya-Prakarana-Adhikarana-Chandrika, Vadkautuhala and Apadeviya. The first one is a standard Mimansa book. His father Anantadeva was a famous Mimansa writer, whose work is Deva-Swarupa-Vichara, Apadeva's son, Jivadeva, wrote Bhatta-Bhaskara.

18. Apadeva.

The above two authors flourished in the Mahomedan period, during which time the Mimansa literature had extended a great deal. The Mimansa literature of this period does not aim so much at the exposition of the Sutras with a view to show their bearing on the Smriti law.

19. Rangaraja-Dharindra. His work is Mimansa Paribhasha.

20. Ram Chandra Bhatta. He is the author of Vidhi Vada and Adhikarana-Mala.

21 Kishori Lal Sarkar. He is the author of the Mimansa Rules of Interpretation, the only book on the subject in the English language.

This vast field of the Mimansa literature has thus been trodden by so may geniuses. That shows with what earnestness the Mimansa principles and rules have been developed by the Hindus. Certain families devoted themselves wholly to the study of this subject, which attained its zenith during the Mahomedan rule.

SECTION 4. CLASSIFICATION OF VEDIC TEXTS

Classification of Vedic texts. The classification of the Vedic texts or the revealed law has been given by Jaimini in good many different ways and with different aspects and purposes. One of them, which is the chief classification, is as under :

1. विधि —Obligatory texts called *Vidhis.*
2. निषेध or प्रतिषेध—Obligatory texts called *Nishedhas* or *Pratishedhas.*
3. अर्थवाद्—Non-obligatory texts called *Arthavadas*, which are connected with particular Vidhis.
4. नामधेय—Non-obligatory texts called *Namadheyas*, unconnected with any particular Vidhi but dealing with general definitions and denominations.
5. मन्त्र—The *Mantras*, a peculiar class of texts only occurring in the Vedas.

1. Vidhis. Their definitions and difference. *The Sanskrit definition* of duty is *Chodana Lakshana Artha* (what is to be done by virtue of a command). From this the definition of a Vidhi is *Chodana Lakshana Shabda* (an expression having the character of a command). This definition is not

correct, as the word 'chodana' does not imply a sanction when used with the word *Shabda*, as it does when used with the word *Artha* in the definition of duty. So the Mimansakas adopt this definition of Vidhi : "*Aprapta prapako* Vidhi." "A Vidhi is that which puts one in a position which ordinarily he is not apt to get into." A sanction is necessarily implied in this definition of Vidhi. Briefly put, Vidhi means a mandate—that which must be done ; it is expressed in a very simple and unambiguous language without any superfluity.

2. Nishedhas.

The definition of a Nishedha is just the reverse of Vidhi. A Nishedha is against *raga prapta*, that is, it is a "prohibition of what one is apt to do by the impulse of some particular passion." So there is *no difference* between a *Vidhi* and a *Nishedha* in principle, the one being a positive command and the other negative. Both contain a command imposing an obligation.

3. Arthavadas.

An Arthavada is a statement about a Vidhi without adding to or deducting any thing from it अर्थवादानां हि सिद्धरूपोऽर्थो नहि तदर्थस्य कर्त्तव्यता प्रतीयते। It may explain the reason of a Vidhi ; हेतुवन्निगदाधिकरणम्। सूर्पेण जुहोति। [Jaimini I. ii. Adhi. 3] it may illustrate it विधिवन्निगदाधिकरणम्। औदुम्बरो यूपोभवति [Jaimini I. ii Adhi. 2] ; it may expatiate on its benefits ; विधिनात्वेकवाक्यत्वात् स्तुत्यर्थेन विधीनांस्युः [Jaimini I. ii. 7] or it may present its effect in a tempting form to those who may not be able to apprehend its spiritual value. So it is an explanatory or illustrative text or a text in the nature of a recital or a preamble. Jaimini has also laid down the principle that an explanation or illustration can never be allowed to control the words of an obligatory rule, which is just in consonance with the modern principle of interpretation. This principle has been very nicely explained by Jaimini, when he says that if you take an Arthavada as adding to a Vidhi, then it becomes a separate additional Vidhi itself. विधौ च वाक्यभेद: स्यात्। [Jaimini I. ii. 25]. If it be taken as deducting anything from a Vidhi, it becomes a separate conflicting Pratishedha Vidhi (negative command). Jaimini would never allow this, so long as the text was capable of being construed as an Arthavada. Arthavada is not allowed to interfere with a Vidhi, but it facilitates its comprehension and application and is thus its concomitant तुल्यं च सम्प्रदायिकम् [Jaimini I. ii. 8].

Some illustrations and explanations from writers on Vyavahara law will explain this principle of Arthavada better : Medhatithi in his commentary on Sloka 3, Chapter II of Manu, explains that the word *Vidhana* (provisions of law) used in that Sloka, does not include

Arthavada, which merely confirms what has already been established and does not contain any direction for doing it. अर्थवादानाम् हि सिद्धरूपोऽर्थो नहि तदर्थस्य कर्त्तव्यता प्रतीयते। Kulluka Bhatta also in his commentary on Sloka 6, Chapter II of Manu explains that an Arthavada tends to establish duties by containing praises, which are to be read as a part of a Vidhi proposition. अर्थवादानामपि विध्यैकवाक्यतया स्तावकत्वेन धर्म्मे प्रामाण्यात्। Jimutavahana supports the right to inheritance by reason of the fact that the inheritor or heir offers funeral oblations to the deceased: "The succession of grandfather's and great grandfather's lineal descendants including the daughter's son, must be understood in a similar manner, according to the proximity of the funeral offering: since the reason stated in the text 'for even the son of a daughter delivers him in the next world, like the son of a son,' is equally applicable, and his father's or grandfather's daughter's son, like his own daughter's son, transports his mane over the abyss, by offering oblations of which he may partake." In the above text the first part of the passage is the Vidhi regarding the succession of the persons in question, the remaining part is an argument in support of the Vidhi. This is only an Arthavada. So even if a lineal descendant of the paternal grandfather has not performed the funeral oblations, he is not precluded from the inheritance. This is the practical application of the Arthavada maxim.

All imperative texts are not Dharma or Vidhi.

Kulluka and Medhatithi, the two great commentators of Manu, observe with regard to the definition of Dharma or Vidhi as given by Jaimini that anything expressed in the imperative mood in the sacred books is not Dharma or Vidhi, but it must be a matter which is commanded and which at the same time is productive of spiritual bliss. So text *Shyenena abhicharan yajeta* is not a Vidhi or Dharma text but is merely an Arthavada (*a*). They explain Arthavada as being the statement of what is already established and thus show that it does not impose any duty by itself (*b*). Medhatithi holds that an Arthavada, which is not connected with a Vidhi text but gets its support from some other department of knowledge may be regarded as a Gunavada (general clause) (*c*) अर्थवादे तु प्रमाणान्तरानुसारेण गुणवादो न दोषाय इति।

4. Namadheyas.

Namadheyas are descriptions of names and correspond with modern 'definitions and general clauses' originating in the 'Apurva sanction, but do not contain a

(*a*) Kulluka's commentary on Sloka 1, Ch. II and also 'Medhatithi's commentary on Sloka I. Ch. II.

(*b*) Medhatithi's commentary on Sloka 3, Ch I, and Kulluka's commentary on Sloka 6, Ch. II.

(*c*) Medhatithi's commentary on Sloka 103, Ch. I.

command in themselves अपि वा नामधेयं स्याद्यदुत्पत्तावपूर्वमभिधायकत्वात् [Jaimini I, iv. 2].

The difference between Arthavadas and Namadheyas is that the one has reference to a particular Vidhi while the other has none. As a definition, it has some bearing on the general scope of the subject यस्मिन् गुणोपदेशः प्रधानतोऽभिसम्बन्धः [Jaimini I. iv. 3] This distinction is not foreign to the modern law of interpretation. Medhatithi has somewhat extended the meaning of the word Namadheya अर्थवादे तु प्रमाणान्तरानुसारेन गुणवादो न दोषाय इति । Jaimini has clearly laid down [I. iv. 4] that a text may be in the form of a Vidhi, but in substance it may be a Namadheya. Some Mimansakas limit the term Namadheyas to the proper names of some ceremonial acts. The language of Sutras is comprehensive enough to include all cases of nomenclature and definition. Sometimes the ordinary meaning of a word or a set of words has to be ignored when they are used merely as proper names. वैश्वदेवादिशब्दानां नामधेयताधिकरणम् । [Jaimini I. iv. 10].

Considering this difference in the light of the definition of Vidhi, that which makes *prapta* प्राप्ता of an *aprapta* अप्राप्ता *i.e.*, which compels one to do what he would not spontaneously do, is the inflexible will of the law-maker. It is not an expression of the will in the case of an Arthavada. It is an observation in the nature of a commentary, as if the law-maker condescended to point out the merit of the law from the ordinary point of view. Or in other words, an Arthavada is in the nature of a gloss made by the law-maker himself. When a matter has an *angangi* अङ्गाङ्गी relation with a Vidhi or when it is a part and parcel of a Vidhi, it is either an applicatory Vidhi or a *prakarana* प्रकरण, if it is of an authoritative character, but not so if it is only an Arthavada. An Arthavada is not *aprapta prapaka* but only a *prapta prapaka* in the sense that it relates to what has been already concluded by a declared Vidhi.

K. L. Sarkar (p. 41), the learned Tagore Law Professor, has explained *Namadheya* thus : " A Namadheya is an independent clause. It is not in the nature of a gloss on a particular Vidhi. It is a statement made by the law-maker in his character as such, and is in this sense authoritative ; but it simply states what is what. Such a statement does not directly bear upon any particular Vidhi. By defining things it serves to elucidate the main purpose of the Vedic Law. It serves to show what things would come under the category of Swargakama and what not. For instance, the Namadheya, *Shyenena Yajeta*, explains that *Shyena Yaga* is a *Yaga* for doing mischief to others, and therefore, that Yaga cannot be the subject of an Utpatti Vidhi or of any Vidhi. Thus, Namadheya elucidates the *Pradhana Chodana* tending to show

what things are unfit to be embraced in it, and what are to be so embraced."

5. Mantras. The Mantras are a peculiar class of text, which occur in the Vedas and have nothing to do with law.

Another classification due to obligatory force. Jaimini sub-divides the Vidhi texts from various points of view. According to *the degree of obligatory force* they are classified as follows:—

(1) *Vidhi proper*, (2) *Niyama* and (3) *Parisankhya*.

This classification contemplates only positive injunctions and not prohibitions. As the sanction of a positive injunction is chiefly the unattainable character of benefit to be gained by complying with it, the degree of the obligatory force of such a Vidhi varies according as the benefit to be derived is wholly unattainable by other means or is partly so unattainable. Therefore, the Vidhi is perfect and absolute when the promised benefit is fully attainable by complying with it and unattainable by other means. The Vidhi becomes imperfect and not absolute when it is partly attainable by compliance with it and partly by other means. The Vidhi would be a mere recital, *i.e.*, the statement of benefit with real obligatory force, when the benefit is attainable by ordinary means also besides its being obtainable by following the Vidhi. Kumarila Bhatta differentiates between them as follows:—

" A *Vidhi* tends to secure what is otherwise at all not attainable."

" A *Niyama* tends to secure what is partially otherwise attainable."

" A *Parisankhya* consists in a statement or recital as to a benefit which is commonly attainable in its entirety either by acting according to the statement or by other means."

K. L. Sarkar (p. 42) has expressed the same view in present-day legal phraseology thus:—

1. A Vidhi is a perfect (*imperative*) command.
2. A Niyama is an imperfect (*directory*) rule.
3. A Parisankhya is a *monitory* precept.

A Vidhi supplies an urgent necessity, a Niyama is not so urgent; while a Parisankhya is hardly required as a rule of law. These illustrations would clear this point; **द्वादश्यां पारयेत्** " Take a goodly meal after the fasting on the eleventh day of the moon ". It is a Niyama, which implies that the meal is to be taken unless one has any good reason for abstaining from it.

पञ्च पञ्चनखाः भक्ष्याः । " The flesh of animals whose feet are divided into five nails is eatable." This means that you *may* eat the flesh only of such animals but not that you *shall* eat it. This is a Parisankhya.

Some jurists hold that a Parisankhya is meant to prohibit all that is not permitted by it, and it should be taken as an implied prohibitory Vidhi. But this view has been refuted by Savara and Kumarila Bhatta and Jaimini himself [I. ii. 42 and 43], who puts Parisankhya as Arthavada **परिसंख्या अर्थवादो वा ।**.

There appears to have been an effort on the part of recent Smriti writers to make out that a Parisankhya was an implied prohibition. But this view has not been countenanced by the leading Mimansakas. Jimutavahana only alludes to but does not expressly mention Parisankhya in his discussion on the interpretation of the text regarding partition by the sons after the death of their parents. He begins his arguments by saying that the text cannot be taken by way of Parisankhya as implying a prohibition of partition during the life-time of the parents by the express mention of partition at their death. He alleges that to take it as making such an implication would be open to the objection of giving the go-bye to what is expressly mentioned. This is one of the objections which the leading Mimansakas urge against the view of accepting Parisankhya as an implied prohibition. The difference between a Niyama and a Parisankhya and between a Vidhi and a Niyama has been given by Medhatithi in his comments on verse 45, Ch. III, Manu: **यः शब्दः कर्त्तव्यताबोधकः अग्निहोत्रं जुहुयात् स्वर्गकाम इति । नह्यग्निहोत्रस्यैतद्वचनमन्तरेणान्यतः कुतश्चित कर्त्तव्यतावगमः ।**

'Vidhi is an expression which declares a duty, as for instance, the expression 'offer fire sacrifice for heavenly bliss,' the duty of offering fire sacrifices not being derivable from any other than the text mentioned."

नियमः पुनर्य्यत्राद्रृष्टसिद्ध्यर्थस्य वचमन्तरेण पाक्षिकी प्राप्तिः । यथा समे यजेतेति दर्शपौर्णमासादि यागविधानाद्देशभाव मापतितम् ।

"Niyama takes place when an expression connected with a duty regarding a spiritual (unseen) matter is applied to something involved in that matter, as for instance, regarding the Darsha Paurnamashi Yajna, there is the direction to perform it on an even ground, implying a suggestion of not choosing an uneven ground, which, if chosen, would contravene the collateral direction."

It may be remarked that the contravention of the direction will not invalidate the Yajna itself, but would reduce its Apurva transcendental benefit.

अथ पञ्च पञ्चनखा भक्ष्या इति क्षुत्प्रतिघाते नार्थेन शशकादिष्वपि भक्ष्यता प्रसक्ता तद्व्यतिरिक्तेष्वपि वानरादिषु । न च तत्र पर्य्यायेणैव प्रवृत्तिः । युगपत् तत्र चान्यत्र च प्रसक्तौ पञ्च पञ्चनखा भक्ष्या इति वचनमितरपरिसंख्यानार्थं परिसम्पद्यते ।

As regards Parisankhya Medhatithi explains that the expression 'Five of the class of five-nailed animals may be eaten,' also suggests the eatability of the others of that class. And as regards this eatability, the natural inclination of eating (which varies) will not (uniformly) recognise the fitness of some to be preferred to others. Hence this text is meant to suggest rather the unfitness of all but the five mentioned for food, than the fitness of those mentioned."

He then mentions the three objections against the view of accepting Parisankhya as an implied prohibition. But he concludes by saying that in the particular case which he was considering Parisankhya as suggesting the undesirability or ineligibility of the non-mentioned things compared with those mentioned, was applicable.

Raghunandana also explains these three terms in his Prayaschitta Tattwa (J. N. Vidyasagara's Ed. p. 485) thus:

चान्द्रायणादौ भोजनस्य रागप्राप्तत्वात् नाप्राप्तप्रापकोविधिः

"The direction about eating in the Chandrayana Vrata cannot be Vidhi, because a direction to do what every man is eager to do by natural impulse is not a Vidhi."

अहरहः सन्ध्यामुपासीत इत्येवं रूपम्।

"A Vidhi is like the command 'perform the Sandhya prayer at all times."

"The direction about eating in the Chandrayana Vrata is also not a Niyama Vidhi, as it can have effect only in the contingency of one not using his own discretion to refrain from eating from a sense of its not being needed."

"It might be a Niyama Vidhi if the direction was 'Eat at such and such day of the noon in such and such month."

नापि तद्भक्षणस्यानावश्यकत्वेन स्वार्थो गव्यवच्छेदमात्रफलका नियमविधिः स च तत्तिथौ तत्तद्ग्रासान् भुञ्जीतैवेत्येवं रूपः

"A Niyama takes place when, although a matter is optional, it should be done in a certain case."

When it is said that a man should satisfy his hunger or appease his thirst, there is no law, because no law is required for such purposes. These statements do not show any want which could be called *Aprapta* (not apt to be spontaneously fulfilled). The whole is *Prapta, i.e.*, apt to be spontaneously fulfilled. But when it is said that a man should not marry within certain degrees of relationship, this is law, but a law of worldly nature or a civil law, for a rule is required to ensure what otherwise would be *Aprapta* (not apt to be spontaneously fulfilled).

The spiritual or the ecclesiastical law as well as the Vyavahara

Like classification of spiritual Vidhis.

law classifies Vidhis into Vidhi, Niyama and Parisankhya. The difference between a spiritual Vidhi and a Vyavahara Vidhi is the same as between Niyama and Parisankhya. The difference in the two laws is that in one case the sanction is the hope of obtaining what is absolutely unattainable by other means and the fear of losing it in case of non-compliance, while in the other, the Vyavahara law, the sanction is the hope of obtaining what the society through its representative, the king, can and does secure to a man and also the fear of punishment at the hands of that representative of society. In the same way, a spiritual (Vedic) Niyama relates partly to things absolutely unattainable by worldly means and partly to those that are so attainable by those means. A Vyavaharic Niyama is partly of the character of a rule having the sanction of punishment by the society and partly a matter of discretion.

Vyavaharic Niyama illustrated.

"The prohibition of marriage within certain degrees of family relationship is a Vidhi, the non-observance whereof would vitiate a marriage. But the direction of Manu that the bride must be an amiable and healthy girl is a Niyama, the non-observance of which would not vitiate a marriage." Vijnaneshwara says that "in transgressing the prohibition against (espousing) sickly and the like brides, there is only a transgression of a visible rule (framed with a popular object), the status of a lawful wife is super-induced notwithstanding [the existence of those defects.] "

Jimutavahana contends that the expression 'the sons may partition the property after the death of the father and mother' is not a Vidhi, because such a partition is not *Aprapta Prapaka, i.e.*, by such partitioning they would get nothing which might not be got in the usual course of things by virtue of their proprietary right. He says that it cannot be a Niyama in the Vedic or in the Vyavaharic sense of the term, that is, as laying down a direction as to the time of partition. He further asserts that the text is an Anuvada, that is, a mere explanatory text.

Parisankhya.

Parisankhya is a direction in respect of a thing which is wholly a matter of discretion and not partly so, but at the same time it is sometime authoritatively laid down. So it is both *prapta* and *aprapta*.

Raghunandana discusses the character of Parisankhya in his learned treatise, Prayaschittatattwa (p. 485) and says that, in general, it is wrong to act upon the principles of *expressio uniterius est exclusio alterius*, but in exceptional cases the principle may be adopted as in the

case quoted below which he was considering:

तस्मादगत्या "श्रुतार्थस्य परित्यागादश्रुतार्थस्य कल्पनात् ।
प्राप्तस्य बधादित्येवं परिसंख्या त्रिदोषिका ॥
अन्यार्थश्रूयमाणा च यान्यार्थप्रतिषेधिका ।
परिसंख्यातुसा ज्ञेया यथा प्रोक्षित भोजनम् ॥

K. L, Sarkar enunciates it thus, " In fact, as in the case of revealed law and the laws of the Acharakanda so in the Vyavahara Jurisprudence, a Vidhi is an imperative command, a Niyama is more or less a directory or regulatory rule, and a Parisankhya is, in general, a monitory or recommendatory rule, but in exceptional cases, implying a suggestion of prohibiting the correlative of what is recommended."

" Both Jimutavahana and Vijnaneshwara quote another case where a rule is to be taken as directory or monitory in the Vyavahara law. This is where a Vidhi of the nature of a merely spiritual or moral character occurs in the body of the Vyavahara law but is inconsistent with some positive provisions of its own. Such a rule would undoubtedly be a Vidhi in the spiritual or eccelesiastical jurisprudence, but occurring in the body of the Vyavaharic law and contradicting any of its established rules it must be taken merely as recommendatory or monitory. Where, however, such a moral or spiritual rule does not contradict any established rule of the Vyavahara law but, on the contrary, is in unison with it would support and strengthen the particular Vyavahara rule corresponding to it."

This distinction between the three classes of Vidhis and the question whether the operative word of a text is to be construed as *shall* or *may* is not peculiar to the ancient Hindu Law but is found in the modern system of jurisprudence as well,

The gradation of obligatory force with reference to the consideration of the sanction of benefit is not a fanciful thing as in the case of modern law, which makes legal rules rest on the sanction of loss of benefit. For example, the law of limitation has for its sanction the loss of a right which a man possesses; the law of compulsory registration is based upon the sanction of loss of benefit of the document, if it is not registered. In these cases there is no sanction of positive punishment. In the case of the Stamp law the sanction is partial and not so complete as in the above two cases. If a man fails to pay the requisite stamp duty except in some cases, he does not absolutely lose the benefit of the document, but on paying a certain amount by way of penalty, he may get the benefit of it. So to measure the obligatory force of a Vidhi by the degree of loss of benefit accruing from its non-compliance is not open to objection and is not peculiar

to the Hindu system of law.

Classification of Vidhis according to their nature and purpose.

The Vidhis have also been classified according to *their nature and purpose.* A distinction between adjective and substantive law has been made in modern law books. The adjective law is further sub-divided into rules which essentially affect the obligations imposed by the substantive law and mere rules of procedure. There is another class of rules regarding personal qualifications and competency, *e.g.*, who is competent to contract. The Vidhi texts have been classified as follows :—

(1) *Utpatti Vidhis*—Substantive obligatory rules

(2) *Viniyoga Vidhis*—applicatory rules.

(3) *Prayoga Vidhis*—rules of procedure.

(4) *Adhikara Vidhis*—rules laying down personal qualifications and personal competency.

1. Utpatti Vidhis.

Utpatti means 'originating'. The *Utpatti Vidhis* are the basis of obtaining the main object of the Vedas, *viz.*, salvation or heavenly bliss, and the acquisition of a civil right stands in the same position in the domain of civil law. So Vidhis that originate a right correspond to the Vedic Utpatti Vidhis. The Vidhis which enforce the performance of the *Agnihotra Yaga* स्वर्गकामो अग्निहोत्रं जुहुयात् and Darsa *Paurnamasi Yaga* स्वर्गकामो दर्शपौर्णमासाभ्यां यजेत are Utpatti Vidhis and are the substantive Vedic laws of the highest order ; other Utpatti Vidhis of less importance are नानृतम् वदेत् 'Never tell an untruth, नहिंस्येत् 'Never hurt anyone.' In all Utpatti Vidhis there is a common element, *viz.*, *Swargakamo Yajeta*,' *i.e.*, perform ceremonies for heavenly bliss. This common element is the primary command (*Pradhana chodana*). "It is independent of material objects, and has nothing to do with the fire sacrifice or the full moon sacrifice. It is defined to be 'the command with which material things are not mixed up.' It has nothing to do with ceremonial worship, expression which is its tangible expression and is called 'Shesha'

The obligation imposed by the primary command is the duty of prayer and sacrifice. But this ideal act of duty does not stop there. It demonstrates itself by some overt act. This overt act is Karma (sacrificial ceremony) कर्माण्यपि जैमिनिः फलार्थत्वात् [Jaimini III. i. 4]. It is also accompanied by verbal acts in the shape of chanting hymns along with sacrificial ceremony तच्चोदकेषुमन्त्राख्या [Jaimini II. i. 32]. Thus the command to pray and offer sacrifice for the highest state of man is to be realised mentally, to be imposed by songs and hymns, and to be made tangible by external physical acts. Realisation by

reciting verses is the chief feature of the Rig Veda तेषामृग्यत्रार्थवशेन पदव्यवस्था [II. i. 35]; that by songs and hymns is the chief feature of the *Sama* Veda गीतिषु सामख्या [II. i 36]. That by other means besides the above is the chief feature of the Yajur Veda शेषे यजुः शब्द [II i. 37] (p. 47)."

The discussion of *Swargakamo Yajeta* is essential for two reasons. Firstly, because it is difficult to follow the Jaimini Sutras without first understanding *Swargakamo Yajeta*. Secondly, because the fact that the Hindu Law is based on considerations of spiritual benefit will not be clearly understood without its aid. According to the Mimansa Jurisprudence, the prime command, 'pray and sacrifice for the highest spiritual state' is the fountain head of all rules of the Hindu Law. Spiritual benefit is to be sought not because it is a benefit but because it is a command. No doubt the Smriti Vidhis are not preceded by the formula *Swargakamo Yajeta*, but to make them valid this formula must be read into them and they must be capable of having the essence of Vedic Vidhis सामान्यश्रुतिकल्पनाधिकरणम् [Jaimini I. iii. 8]. This is the underlying theory.

2. Viniyoga & 3 Prayoga Vidhis.

Guna Vidhi (adjective law) includes both Viniyoga Vidhis (applicatory rules) and Prayoga Vidhis (rules of procedure). Viniyoga Vidhis are of prime importance, as they are part and parcel of the Utpatti Vidhi (rules of substantive law). Prayoga Vidhis are of an incidental character, as they are mere rules of procedure. The former provide the means with which an Utpatti Vidhi is to be given effect to, while the latter point out the method in which it is to be carried out.

" As the *Karma* (ceremonial act) of an Utpatti Vidhi is the *Shesha* (accessory) to the prime command *Swargakamo Yajeta*, so the processes of Viniyoga Vidhis and Prayoga Vidhis, being ways and means to the *Karma* of the Utpatti Vidhis, may be regarded as the *Shesha* of that *Karma*. [Madhavacharya's Jaiminiya Nyayamala Vistara Bk. III Ch. I Adhi. 3.] These two subdivisions as well as the Adhikara Vidhis are mostly found in the Brahmanas as distinguished from the Samhitas of the Vedas. So the term *Shesha* is also applied to the Brahmanas. In fact just as an Utpatti Vidhi text (*i.e.* text regarding ceremonial worship) is a *Shesha* (accessory) to the Pradhana Chodana (text regarding ideal worship), so a Viniyoga Vidhi or a Prayoga Vidhi is a *Shesha* (accessory) to the Utpatti Vidhi. The word *Shesha* means that which is subordinate or accessory. Therefore, it is used for applicatory Vidhis, and is also applied to the Brahmana section of the Vedas in which applicatory Vidhis and Prayoga Vidhis are mostly found. Here

is an example of a Viniyoga Vidhi. 'By curdled milk perform the *Agnihotra.*' This simply indicates the way in which the *Agnihotra* is to be performed, the performance itself being commanded by the Utpatti Vidhi already referred to. Rules regarding the order (Niyama) in which the different parts of a ceremony should be performed are examples of the Prayoga Vidhi. These rules are of the same nature as modern rules of procedure. Thus it is proved that Viniyoga and Prayoga Vidhis are accessories to Utpatti Vidhis, which again are accessories to Pradhana Chodana.

The Utpatti Vidhis, besides being few, are short and simple and hence require no rules of interpretation. They are mostly used for application purposes. Jaimini deals with these rules of interpretation regarding Viniyoga Vidhis in his third book along with the subject of *Shesha.* Langakshi Bhaskara and Apadeva also describe the six principles of interpretation in connection with the Viniyoga Vidhis as follows: (1) Sruti (the literal principle), (2) Linga (the principle of context), (3) Vakya (the principle of syntactical arrangement), (4) Prakarana (the principle of part and whole), (5) Krama (the principle of succession) and (6) Samakhya (the principle of etymological implication.

4. Adhikara Vidhis.

Adhikara Vidhis—rules regarding personal competency, include not only rules as to who are competent to avail of the Vedic law, but also rules as to how the shortcomings and failures of those who are so competent are to be remedied. Women have been considered competent to join the performance of Vedic duties, and Sudras are not absolutely debarred from it, though they are not generally considered competent to perform *Agneya* sacrifices. These Vidhis are similar to the rules of modern law regarding the competency of persons to enter into a contract or to do things of a like nature.

Scope of the Vedic Vidhis.

The Vedic substantive Vidhis as distinguished from Niyama or the applicatory and other adjective Vidhis, have for their object the spiritual benefit, *i.e.*, the heavenly bliss, and do not aim at visible objects or worldly benefits. If their range had stopped at that, the positive civil law of the Hindu Nation would be wholly outside the scope of the Vedas. The positive law of the Smritis dealing with visible objects and regulating the natural inclinations of men is presumed to be a part of the Vedic law. This presumption may appear rather proper as being beyond the scope of the Vedas, but in fact it is not so. The Utpatti Vidhis dealing with the invisible are not the only substantive Vidhis of the Vedas, as there is yet another class of Vidhis called *Naimittika*

(occasional) or *Kamya* (ordinarily desirable) occurring in the Vedas and recognised by Jaimini. These latter Vidhis deal with visible and ordinarily desirable worldly matters. Jaimini harmonises them with the command to seek heavenly bliss, *i.e.*, with the primary Utpatti Vidhi, either as being the means to it, or as being conjoined with it कामी वा तत् सयोगेनचोद्यते । [Jaimini IV. III, 22]. There is a mention of some worldly benefit in the Naimittika or Kamya Vidhis, but according to Jaimini it is so stated merely as a result and not as the aim; the subordinate character of visible and worldly matters has been pointed out in the following Sutras [IV. iii. 1 and IV. iii. 4.]

द्रव्यसंस्कार कर्म्मसु परार्थत्वात् फलश्रुतिरर्थवादः स्यात् ।

"Because materials, the operations performed upon them, and subordinate acts are subservient to something else, the description of a benefit in connection with any of them is an Arthavada."

नैमित्तिके रिकारत्वात् क्रतुप्रधानमन्यत् स्यात् ।

"What is laid down as occasional is not principal, being derivative; the principal in the shape of religious obligation is different." 'The commentators of the Sutras in connection with Sutras 10 to 16, Ch. III. Book IV. take the case of a Yaga, as Viswajit, in which there is no mention about the object of the sacrifice. They say that the object is to be presumed as being Swarga or heavenly bliss. Thus there are Vedic Vidhis like the Smriti Vidhis dealing with visible objects and matters of ordinary inclination, though theoretically joined with the transcendental sanction.'

Purushartha and Kratwartha Vidhis.

Another division of the Vidhis has also been made by the Mimansa Sutras from quite a different point of view as under :—

(1) the Vedic law relating to individual culture, which is of the nature of religious precepts, termed *Purushartha Vidhis,*

(2) the Vedic law relating to the duties of a man as a member of the Vedic community, such duties being of positively obligatory character, termed *Kratwartha Vidhis.*

This classification is with regard to two kinds of Vidhis—one as a positive command of law and the other as a mere moral precept. It is to be seen whether the latter is a positive law in the conception of the modern English jurists. According to Austin that only is a perfect positive law, the sanction of which is enforceable by a determinate body of persons having authority to enforce it. There is no determinate body for their enforcement in the case of the Purushartha Vidhis or the Utpatti Vidhis, such as *Agnihotram Juhuyat.* But in the

case of Kratu Vidhis, which regulate the details of a Vedic sacrifice there is the assembly of priests at the sacrifice to enforce the procedure. Thus, the Kratwartha Vidhis approach a degree nearer to our positive civil law than the Purushartha Vidhis. Hence the distinction has been made between the two classes of Vidhis by our Mimansakas.

They also indicate the difference between an *Arthakarma* and a *Pratipattikarma.* An *Arthkarma* is a duty imposed by a Kratwartha Vidhi, while a *Pratipattikarma* is a duty imposed only incidentally with reference to an *Arthakarma* already done. The distinction between a Purushartha Vidhi and a Kratwartha Vidhi and that between an Arthakarma and a Pratipattikarma are really distinctions between matters which are fully obligatory and those which are of a quasi-obligatory character. The former distinction has been dealt with in the first eight Adhikaranas of Ch. III. Bk. IV, specially in the 8th Adhikarana.

सुवर्णधारणादीनां पुरुष धर्म्मताधिकरणम् ।

The latter distinction has been explained in Ch. IV Bk. II., specially by Sutras 10 to 22. In these Sutras the author explains what is a Pratipattikarma (an incidental matter) as contra-distinguished from what is essentially connected with the sacrificial ceremony. Thus Jaimini, the father of Hindu Jurisprudence, clearly makes the distinction between a positive rule of law and a rule of conscience. His positive law is mainly religious, while according to modern jurists nothing of the religious law can be regarded as positive, and there is a sharp line of demarcation between the positive law and religious injunctions.

Purushartha and Kratwartha Vidhis are further divided as follows :—

Nitya and Naimittika.

(1) those which are not connected with worldly desires, termed *Nitya ;* and (2) those which are connected with worldly desires termed *Naimittika* or *Kamya,* which are more or less tangibly connected with worldly desires and duties, the most tangibly connected being the Vidhi regarding the **three debts** which form the base or the groundwork of the Smritis. All these facts considered coherently and connectedly show that our positive law as given in the Vyavahara Kanda of the Smritis has been evolved from the Vedic law. From Purushartha Vidhis or purely spiritual laws, which are wanting in positive features, we come down to the *Kratwartha* laws which have the essential features of positive civil law. Then from Kratwartha Vidhis which are mainly directed to invisible objects, we come to those Kratu Vidhis termed *Kamya,* such as, *Pitri Yagas*

Evolution of Smriti law from the Vedic law: theory of three debts.

or Pitri Sraddhas and Putreshthi Yagas, which approach a degree nearer to our positive laws of family status and family property. Then, lastly, we come to the 'three debts' command which forms the ground work of the Smriti-law of status and property.

"Nitya Vidhis are those which are absolutely binding on all persons, and not dependent on any act or choice; whereas a Kamya Vidhi is that which comes into force only in the event of the man having chosen to do some act voluntarily. The distinction may be illustrated in modern language thus. A man is enjoined not to rob another of his property. This is absolute. But where a man, who has by some contract become the lessee or mortgagee of another person, is placed under certain obligations by virtue of his voluntary agreement, this would correspond to Kamya Vidhi. So, in the Mimansa Sutra, we have Nitya Vidhis in the shape of commands that every Brahmin should perform such and such sacrifices as a Brahmin. This is Nitya Vidhi. But when certain sacrifices are laid down as fit to be observed by a person who chooses to do so, with the condition that if he commences it and wants to have the benefit of it, he must follow certain rules for the violation of which penalties are provided. This is a case of Kamya Vidhi." [K. L Sarkar pp. 403-04].

Anarabhyadhita Vidhi.

Another classification of Vidhis is as under: The *Chodana* (command) is usually understood to be an injunction to do some particular act. When a *Chodana* fixes a rule without reference to any specific act, it is termed Anarabhyadhita Vidhi. Dr. Thibaut in his translation of the Artha-Sangraha explains it to be "a rule which stands by itself, out of connection with some particular sacrifice to which it might be referred, so that it must be considered as a general rule." In the Smriti law there are many Vidhis of this nature.

Another very important classification of Negative Vidhis or prohibitions is as follows:

Pratishedha & Paryudasa.

(1) A *Pratishedha* or Nishedha, which is a general and absolute prohibition. (2) A Paryudasa, which is a qualified or exceptional prohibition **प्रदेशानारभ्यविधानयोर्निषेधस्य पर्युदासत्वम्** [Jaimini X. viii, 1.].

Vikalpa.

A conflict would arise when against a positive text there is a Pratishedha text. In this case both the texts lose their force as Vidhis and become texts, which may be accepted or rejected at option **नातिरात्रे षोडशिनमिति निषेधस्य विकल्पकारत्वम्** [Jaimini X. viii. 3]. This is called *Vikalpa* or a matter of option. No such conflict should be assumed as long as the texts may be reconciled by some reasonable means. This difficulty will,

however, not arise in the case of a positive Vidhi and a Paryudasa attached to it, as they are not inconsistent with each other, as a *Paryudasa is* in fact *an exceptional clause or a proviso.*

प्रदेशानारम्भ्यविधानयोर्निषेधस्य पर्युदासत्वम् । [Jaimini X. viii. 1]

Difference between Paryudasa and Pratishedha.

Partishedha or Nishedha is a general and absolute prohibition, while Paryudasa is a qualified or exceptional prohibition. Their difference will be clear from the provisions of exclusion from inheritance of persons for certain disabilities, although they would otherwise be heirs. These rules of exclusion are of the nature of Paryudasa and not Pratishedha, as is clear from the texts of the Dayabhaga and the Mitakshara. The latter puts the subject thus:

"The author states an exception to what has been said by him respecting the succession of the son, the widow and other heirs, as well as the re-united parcener. An impotent person, an outcast and his issue, one lame, a blind man and a person afflicted with an incurable disease, as well as others (similarly disqualified) must be maintained; excluding them, however, from participation."

पुत्रपत्न्यादि संसृष्टोनाम् यद्दाय ग्रहणमुक्तं तस्यापवादमाह ।

क्लीबोऽथ पतितस्तज्जः पङ्गुरुन्मत्तको जड़ः ।

अन्धोऽचिकित्स्यरोगाद्या, भर्त्तव्याः स्युर्निरंशकाः ॥ [Yaj. II. 140]

Pratyakshya and Kalpya.

Still another division of Vidhi and Pratishedha is between (1) *Pratyaksha* (express) and (2) *Kalpya* (implied). This division has reference to the materials which evidence the Vidhi or the Pratishedha. A Pratyakshya Vidhi is embodied in an express text, while a Kalpya Vidhi is made out constructively by such means as Linga, Vakya and Prakarana. Similar is the case with the two kinds of Pratishedha.

Shabdibhavana and Arthi-Bhavana.

Shabdibhavana and *Arthibhavana* mean realising the primary command *Swargakamo Yajeta* doubly; firstly, by directing attention to the force of the command, and secondly, to the assurance of benefit to be derived from fulfilling it. It is very essential according to the modern theory of legislation to know the object or reason of a statute for the purpose of interpretation of passages, the meaning of which cannot be satisfactorily determined either by the principle of literal construction or by the principle of construction by context. In such cases the modern jurist would enquire, what was the evil which the statute was passed to remedy or what good it intended to secure? After determining this they use it as a test in ascertaining the meaning of an obscure

or apparently unreasonable passage. It has already been said that *Swargakamo Yajeta* is the keynote of the whole of the Vedic law. So in modern sense it may be said to be the object and reason of the Divine Eternal Legislation, the object of which is to ascertain duty (Dharma) spiritually, and the meaning of this fundamental command at every step must be realised from the *double* point of view, as an imperative command and as an assurance of supreme spiritual benefit, laying stress in the one case on the verb *Yajeta* (pray and sacrifice) and in the other case on the noun *Swargakamo* (the seeking of heavenly bliss). When this is done, it can be ascertained whether a text is or is not a proper Vidhi text, by seeing if it stands that test of the double *Bhavana* as stated above. For example, the text "By *Syena* ceremony practise mischief to enemy" is not a Vidhi but a mere description (*Namadheya*), because it does not stand the test of the *Arthabhavana*. The method of treatment by Jaimini and modern civil jurists is similar.

Adhikarana.

An *Adhikarana* is a Mimansic process of establishing principles of construction. Kumarila mentions five steps for its establishment in the following Sutra:

"The text under consideration, the doubt concerning it, the first side, the other side or answer and the conclusion, all these constitute an Adhikarana (a complete theme)."

त्रिषयो विषयश्चैव पूर्वपक्षस्तथोत्तरम् ।
निर्णयश्चेति पश्चाङ्गं शास्त्रेऽधिकरणं स्मृतम् ॥

Colebrooke (in his Miscellaneous Essays p. 326) explains an Adhikarana thus:

A complete Adhikarana or case, consists of five members, *viz*:

I. The subject or matter to be *explained*.
II. The *doubt* or question arising out of that matter.
III. The first side or *prima facie argument* concerning it.
IV. The answer or demonstrated conclusion (*Siddhanta*).
V. The pertinence or *relevancy*.

K. L. Sarkar in his learned treatise on Mimansa Rules of Interpretation (p. 62) very aptly remarks:

"This process of interpretation is unobjectionable. It gives a prominent place to the view opposed to what is eventually adopted by way of conclusion, which by this method acquires a greater clearness and strength than otherwise would have been the case. This mode of argumentation, consisting of Purvapaksha or *prima facie* argument, the Uttara or the refutation of it, and then the Siddhanta or conclusion, is peculiar to the Hindu literature. It pervades all Sanskrit discoursive

works. The system of Adhikarana has been followed in Uttara Mimansa or Vedanta. An Adhikarana is also called a Nyaya."

In the words of Colebrooke, the logic of Mimansa is the logic of law. No wonder, therefore, that the same word Nyaya is applied to a legal thesis, and to a thesis of formal logic. In both cases an Adhikarana consists of five parts. According to Gautama a syllogism also consists of five members. There is, however, one great difference that in logic the conclusion is arrived at, firstly by affirming a general proposition of fact, and then showing that the particular proposition in question is covered by that general proposition. "But in a Mimansa Nyaya the basis of solution is either the authority of the Sruti or of principles enunciated in the Smriti, which are not inconsistent with the Sruti or the authority of *Shishtachara* (*i.e.* usages prevailing among good men). It would be seen that arguments resorted to in courts of law are based on similar grounds. And as in a court of justice when the Judge comes to a decision on a point of law from premises partaking of the nature of law, custom, *etc.*, his decision becomes a settled principle of interpretation, when a similar question arises; so the Siddhanta arrived at by Jaimini in each Adhikarana of his book upon the particular question raised in that Adhikarana, furnishes the method of interpretation, which would apply to all questions of a similar character, although the subject matter in relation to which the conclusion is arrived at may be different from that in connection with which the similar new questions may arise." (K. L Sarkar p. 63).

Adhikarana identical with Nyaya.

Proper names have been given to many of the Nyayas. They are generally named after some word or phrase occurring in the subject-matter of the Adhikarana itself or the Purvapaksha of the particular case with which the principle of the Nyaya originated. Thus, Adhikaran is identical with Nyaya.

Mimansa Nyayas superior to those of grammar and logic.

Gopalachariar in his learned treatise Brahmavadin (I. 659) remarks regarding the Mimansa Nyaya :

"The rules (Nyayas) laid down by Jaimini have been implicitly accepted by writers of all schools. The controversial literature of the several Vedanta schools is mainly based upon these Nyayas. This may be verified by a reference to the Nyayamrita Advaitasiddhi Tarangini, Brahmanandeeya, Vaiamalamisriya, Sarvarthasiddhi and other works. The Mimansa Nyayas are largely quoted in works on grammar, such as the Manjusha and Sabdakaustubha. The Nyayas of Tarka and Vyakarana are not considered to be of universal application like those of the Mimansa. The Tarka Nyayas are often rejected by

writers of other schools. The Vyakarana Nyayas are very rarely admitted to be of application outside the science of grammar "

SECTION 5. THE HINDU AND THE ENGLISH SYSTEMS OF INTERPRETATION COMPARED

Substantial similarity.

It has been shown above that the Hindu system of interpretation has a number of elementary rules as axioms like those of Euclid's Geometry. These axioms lay down general principles of interpretation relating to the properties of words and sentences, as Euclid deals with the properties of lines and figures, *etc.* " When by these general properties the meaning of a particular word or a particular sentence is self-evident, this is called Sruti. When the meaning is doubtful, then by examining the properties of words in the particular case the meaning is to be cleared up : this is called Linga. But when the doubt has to be removed by examining the properties of particular sentences, it is called Vakya. Again, when a proposition is to be understood with reference to the necessary connections between the different parts of the topic, it is called Prakarana." Besides these—Sruti, Linga, Vakya and Prakarana—particular propositions have been formulated, which fall under one or other of these heads with regard to concrete cases. These are termed Nyayas or maxims.

The Hindu system of the Mimansic rules is thus both scientific and theoretical.

It has been shown how the principles of Sruti, Linga, Vakya and Prakarana are similar in almost every respect to the principles of interpretation as laid down by Maxwell. A comparison of the opening passages of Maxwell in his famous treatise with that of Savara Swami in the very first page of his Bhashya will be profitable :

" The 'object of all interpretation (of it) is to determine what intention is conveyed, either expressly or by implication, by the language used, so far as it is necessary for determining whether the particular case or state of facts presented to the interpreter falls within it. When the intention is expressed, the task is one of verbal construction only ; but when the statute expresses no intention on a question to which it gives rise, and yet some intention must necessarily be imputed to the legislature regarding it, the interpreter has to determine it by inference grounded on certain legal principles." The passage of Savara Bhashya is almost to the same effect, though it is more discoursive and states that after reading the Vedas one must try to realise their import, The learned author then raises the question that if the intention is once realised as being that of teaching Dharma, what is the need of further efforts to interpret the Vedas? He himself

answers the query by saying that whether a given act agrees with the intention of the Vedas or not it has got to be explained. He further says :—

"Even if the Veda has been proved to be the only means of knowing duty,—with regard to the ascertainment of the meaning of Vedic passages, there is no agreement among learned people (lit. 'people knowing many things') on account of various (kinds of) doubts. Some say "this is the meaning;"—some, "not that, but this,"—and it is also for the settlement of these (differences of opinion with regard to the meaning of Vedic passages) that the treatise, subsequent to this (1st *pada*), has been composed." [Savara Bhashya, p. 2. (Jibananda Vidyasagara's Edition)].

धर्मं प्रतिहि विप्रतिपन्ना बहुविदः—केचिदन्यं धर्ममाहुः केचिदन्यम् ।
सोऽयमविचार्य प्रवर्त्तमानः कश्चिदेवोपपाददानो विहन्येत-अनर्थं च ऋच्छेत् ।
तस्माद्धर्मो जिज्ञासितव्य इति, सहि निःश्रेयसेन पुरुषं संयुनक्तीति प्रतिजानीमहे ।

Maxwell has also said in clear terms that the sole object of interpretation is to ascertain the intention. Where an expression of the intention is required to be known but is not found, it has to be presumed according to certain principles. There is, however, some difference in the methods of the two systems; but the Mimansa rules substantially agree with the rules of construction as laid down by the English jurists.

Illegality and irregularity.

Illegality means and implies an act in contravention of some rule, the result of which is to make the act void. But *irregularity* implies an act in contravention of a rule the result of which does not make the act void. In the former case, the violated rule is imperative, while in the latter it is merely directory or regulatory. This distinction has been made in the Hindu system of jurisprudence; for instance, as to the Vedic rites it is enjoined that the Angas must be performed or the Yajna will be void, while some are merely matters of Niyama, which make it merely a little defective. 'Perform the *Agnihotra* with curdled milk' is a rule by which the use of curdled milk is made an *Anga* (essential part); it cannot be dispensed with, while the direction 'beat the wheat to unhusk it' is a Niyama. Jimutavahana also says that the direction to a man to dispose of his self-acquired property is a mere precept so that his relatives may not be distressed, and a violation thereof will not make the alienation void. This is called the doctrine of *factum valet*. Thus the cases of irregularity and

those of illegality have been clearly distinguished by the Hindu jurists.

Patent and latent ambiguities.

There are two sorts of ambiguities, patent and latent; the one, where the instrument appears ambiguous on the face of it, the other when collateral matters of the instrument give rise to ambiguity, though the instrument itself on its face appears certain enough In patent ambiguity the written instrument must be construed with reference to its own terms; but a latent ambiguity (which in truth grows out of this application of the language to facts and circumstances) is raised by matters parole, and hence may be removed by the same means. The difference between the two is that if on perusal one sees no ambiguity, but there is nevertheless an uncertainty as to its application, the ambiguity is latent; but if he detects the ambiguity from merely reading the instrument, it is patent. These terms are generally used with reference to private documents. But passages in statutes may also happen to fall under either of the two categories. In the case of patent ambiguity the passages are to be discarded, while in the other case the help of extrinsic evidence or circumstances is permitted to ascertain the intended meaning This is the law according to modern jurisprudence.

The Hindu jurists have not laid down the law on the subject in so clear words. A patent conflict is a case of Pratishedha (simultaneous injunction and prohibition) resulting in an option, for example, the texts: "Use the *Shodasi* vessel in the dead of night" and "Do not use the *Shodasi* vessel in the dead of night." The Mimansakas deal with the subject in connection with their topic of avoiding Anarthakya (meaninglessness) In the Mimansa system the rule regarding patent ambiguity is that the jurists should not easily take a word or sentence to be self-contradictory or absolutely uncertain of meaning but should try to correct the language by means of Linga, Vakya or the Prakarana principle 'They give a meaning to such incoherent expressions as "the vegetables performed sacrifice for a session." By what is called the Kaimutika Nyaya (what and again maxim), they explain the expression to mean that man should certainly perform sacrifices as even the vegetables did once upon a time. The sentence "there should be no altar of brick in the firmament or in the heavens" is not allowed to be considered as absurd. However, these are met in the Vedas; and so they must be anyhow understood in some sense (*a*). Similar is the case with the Smritis which are less sacred than the Vedas. Even today an interpreter of a statute is bound to extend due respect to the legislative authorities. Therefore, it can be safely said that the regard or the respect accorded to the sacred law is its meed

(*a*) K. L. Sarkar-Mimansa Rules of Interpretation 490-91.

RULES AS TO CONFLICT OF LAWS AND THEIR COMPARISON WITH MODERN PRINCIPLES

(A). When Shruti texts conflict.

(B). When there is a conflict of Smriti texts.

(1) As amongst themselves, each text is to be understood as applicable to the context in which it is used.

श्रुते द्वैधे स्म द्वेधे स्थलभेदः प्रकल्पते ।

(2) There is no doubt a general rule that solves a number of difficulties; but suppose an occasion arises in which a Smriti text is opposed to Shruti text, be it not forgotten that there is very little chance of this happening, for Shruti texts never speak of law at all; but if at all the occurance takes place, the rule is "where the Shruti and Smriti are opposed, the Shruti alone will prevail" The rule is:

श्रुतिस्मृति विरोधेतु श्रुतिरेव गरीयसी ।

(3) But the question cannot stop here. We perfectly know that different Smritis are not the products of the same age. They speak of different times, and are the records of different ages. Therefore, it will be no wonder that two Smritis conflict. The rule is, therefore, where two Smritis conflict, the decision should be by a special reference to rules of law as determined by usage.

स्मृत्योर्विरोधे न्यायस्तु बलवान व्यवहारतः ।
अर्थशास्त्रस्तु बलवद्धर्मशास्त्रमिति स्मृतिः ॥

(4) Science of Law has greater authority than the science of politics.

(5) Custom is transcendantal law.

The next class of writings which are considered as authorities in Hindu Law, are commentaries. They are of two classes. (1) Commentaries on texts, that is, commentaries on any particular Smritis, just as Mitakshara, a running commentary on the text of Yajnyavalkya. (2) Nibandha, digests of all texts. The scope of these Tikas and Nibandhas is to explain the apparent or real conflict among the Smiritis. Though, therefore, the professed object of the commentator is to interpret the text in the guise of interpretation, the commentators and Nibandha writers made new rules and explained away the contrary precept of the Smritis by forced interpretations. Whatever that may be according to modern principles, it has been held by the Judicial Committee in *Callector of Madura* v. *Mooto Rama Linga*: "The duty of the European Judge, who is under the obligation to administer Hindu Law, is not so much to inquire whatever a disputed doctrine is fairly

deduceable from the earliest authority, as to ascertain whether it has been received by that particular school which governs the district with which he has to deal, and has been sanctioned by usage." Under the Hindu system of law, *clear proof of usage will out-weigh the written text of law.*

It is well established that whatever may be the law intended to be laid down by the Smriti-writers, that law must be sought for in the writings of the commentators. In determining what is stridhana according to a particular school, what the Court has to do is to look to what the commentators, who are the authorities in that particular school, have said on the subject. Custom is one of the three sources of Hindu Law. Where there is a conflict between a custom and the text of Smritis the custom overrides the text.

आचारः परमो धर्मः शास्त्राद्वृद्धिर्वलीयसी ।
व्यवहारो हि बलवान् धर्मस्तेनावहीयते ॥ *[Narada II, 24–26].*

(6) In a conflict between any text and its commentary by a recognised authority, the latter should prevail as reflecting the existing custom (*x*).

(7) Lastly, when all these rules fail, the act which is enjoined by one text and forbidden by another should be taken as an optional one.

SECTION 6. MIMANSA PRINCIPLES OF INTERPRETATION

Importance and use of Mimansa as a means of interpretation and its influence on Hindu Law.

So long as words and sentences carry their ordinary meaning, there is no difficulty at all, and they are taken and followed for whatever they lay down; but the difficulty would arise, when any text is found to be in apparent conflict with usage or is not as complete and expressive as it ought to be, and when the rules of interpretation laid down in Mimansa for interpreting and reading the Vedic text are invoked, and a passage or passages are explained accordingly.

Just as Vidhis became necessary for the proper understanding of Vedas, so also the science of interpretation came to be understood as one of the accompaniments to the course of Vedic studies, and Mimansa grew up as an independent faculty of studies.

The importance and use of Mimansa is most ably stated by *Colebrooke* in the following words :—"It will be observed as has been intimated in speaking of the members of an ADHIKARANA in the

(*x*) *Atmaram* v. *Bajirao* 1935 P. C. 57.

Mimansa that a case is proposed, either specified in Jaimini text or supplied by his scholiasts. Upon this a doubt or question is raised, and a solution of it is suggested, which is refuted, and a right conclusion established in its stead. This *disqusition of the Mimansa* bears therefore a certain resemblance of *juridical questions* and in fact the Hindu Law, being blended with the religion of the people, the same modes of reasoning are applicable and applied to the one as to the other. *The logic of the Mimansa is the logic of the law,* the rule of interpretation of civil and religious ordinances. Each case is examined and determined upon general principles, and from the cases decided, principles may be collected. A well-worded arrangement of them would constitute the Philosophy of Law, and this is in truth what has been attempted in Mimansa. Jaimini's arrangement, however, is not philosophical, and I am not acquainted with any elementary work of this school in which a better distribution has been achieved."

Though Jaimini's rules were meant for sacrificial and ceremonial observances, there are not a few instances in which they were freely applied in regard to Vyavahara or positive law.

The earliest example of this is Apastamba when he establishes the *equal rights of sons* to father's wealth.

Vijnaneshwar makes use of these Mimansa rules in various cases and a clear example is that when he establishes the right of a widow. But the exegetic value of these rules though for the purpose of establishing his own story has been illustrated in the most patent form by Jimutavahana in the first chapter of Dayabhaga in the discussion on the following text of Manu :

ऊर्ध्वं पितुश्च मातुश्च समेत्य भ्रातरः समम् ।
भजेरन् पैतृकं रिक्थमनीशास्ते हि जीवतोः ॥

The text is quite clear and plain. Now let us see how by recourse to these rules of interpretation, he twists the text. Jimutavahana says that this text cannot be a Niyam, for it is certainly not meant that any sin is incurred by not dividing. Manu himself has declared in another text that it is optional with the co-parcener to remain joint or to separate. The text is not a Vidhi for the act of division may be done out of natural impulse irrespective of the rules of the Shastras.

It is not a Parisankhya, for it is not proper ordinarily to accept an interpretation which makes a text of law Parisankhya.

The conclusion is, therefore, arrived at that it is an Anuvada, but it is a necessary Anuvada, and therefore there can be no objection to its being accepted in that light.

What is meant is that the sons become owners after the death of

the father. If the sons be owners then the right to divide follows as a matter of course. The declaration that the sons may divide paternal wealth is Anuvada, but it is meant to apply that sons become owners after father's death, and not before, and therefore, the text is a necessary one.

The above discussion will make it clear that free use was made of these rules by Mitakshara and Dayabhaga, nay, even their reasoning and logic in some cases is based upon the reasoning and logic of these rules. In one case *Radha Mohan* v *Hardai Bibi* a rule of Jaimini assumed great importance. The text to be interpreted was that of Vashistha :

न त्वेकः पुत्रो दद्यात् प्रतिगृह्णीयाद्वा ।
स हि सन्तानाय पूर्वेषाम् ॥

"Let no man give or receive an only son, since he must remain to raise up the progeny for the obsequies of ancestors."

Let us see what Jaimini has to say.

अथवै हेतुवन्निगदा :—शूर्पेण जुहोति, तेनहि अन्नं क्रीयते इत्येवामदयः तेषु संदेहः क्लिश्नाति तेषां कार्यमुक्तहेतुः

"Now in regard to such text (निगदा) having a clause assigning reason as one should sacrifice by means of शूर्प for by means of that food is prepared." A doubt arises as to whether they are simply commendatory or contain a reason making them obligatory. Jaimini's final reply to this query is तस्मात् हेतुवन्निगदस्यापि स्तुतिरेव कार्यम् । "therefore the import of text having a clause that contains a reason is commendation only"

Now the above text of Vashistha with regard to the character of which a great question arose before their Lordships of the Privy Council in *Radha Mohan* v. *Hardai Bibi* (21 All. 460) must also be treated as a recommendatory one, in asmuch as it contains a precept that is intended for a certain specified purpose. The rule of Jaimini, stated above, makes it clear that all texts supported by assigning of reason are to be deemed not as Vidhi but simply as Arthavada (recommendatory).

When the Judicial Committee had to deal with this matter in appeal, they say of Jaimini's rule "That, if sound, would be conclusive as to Vashistha's text; but it is rather startling and very intimate acquaintance with the Smritis would be needed before admitting its truth. It has not been brought forward in any case, prior to this Allahabad case. It may however be fairly argued that one who having the power to give an absolute command, gives an injunction not expressed in unambiguous terms of absolute command, but resting on a reason, is

addressing himself rather to the *moral* sense of his hearers, than to their duty of implicit obedience."

If the learned counsels arguing before their Lordships are ignorant of Jaimini's Sutras and their application to the texts, we are sorry for it; their Lordships' doubt is nothing more or less than the doubt which some English Lawyers used to express. "Has such a thing as Hindu Law ever existed or . . . . . Sanskrit,"

The decision of the Calcutta High Court where it applied the legal maxim, सकृत् कृते कृतः शास्त्रार्थः "an act enjoined by the Shastras need not be performed more than once" in *Gyanendro Chandra Lahiri* v. *Kalla Pahar* (9 Cal 50) relating to the validity of the simultaneous adoption was based upon this principle.

Another fact that gives the Mimansa the high place of importance, is the nature of the sources of Hindu Law, the principal among which are the Srutis and the Smritis. The *very nature of these works necessitates the existence of rules* which may serve as guides in determining the exact meaning attributed to a particular passage.

Importance of Mimansa rules due to the nature of the sources of Hindu Law.

The first source is the *Sruti* or the *Vedas* The *Vedas* were the repositories of all learning and their study was a paramount duty, and the several *Vedangas* and systems owe their origin and development to the study of the Vedas. The Vedic study gave an advancement to the science of interpretation and the *Mimansa* grew up as an independent faculty of Sanskrit studies. According to the old traditions it has two divisions—the पूर्वमीमांसा *Purva Mimansa* of Jaimini and the उत्तरमीमांसा *Uttara Mimansa* of Sri Badarayana. The interpretation of the ritual contained in the Vedas has been dealt with by the *Purva Mimansa* and though the ritualistic portion is now of an academic interest, yet the logic and the line of reasoning propounded in this system have obtained general authority and the Mimansa is now regarded as the sole guide as to matters of interpretation. The very nature of the two premier sources of our Hindu Law—the Srutis and Smritis, necessitates a reference to rules which may serve as a guide in determining the exact meaning attributable to particular passages. In case of special statutory enactments the matter would be quite different, any vagueness or indefiniteness can be removed by statutes either explaining or amending the old ones, but our divine system of law is beyond any human touch and cannot be varied in any way.

The subject of interpretation involves two questions:

(1) *What is the meaning and intention of a particular word, sentence or passage?*

(2) *Whether it constitutes an obligatory rule of any kind, or a quasi-obligatory rule of a non-obligatory matter?*

The Vedas indicate, though occasionally, the germs of the Mimansa principles. The Dharma Sutras of Gautama and Apastamba also indicate the same. They lay down the following principles: (1) Smriti or practice (*Achara*) is no authority, when it is in direct conflict with a Sruti; (2) Where contradictory methods of performing the same acts are prescribed by authorities of equal force, one may adopt either optionally; (3) Kalpa Sutras are not Vedas but only their Angas. These principles are respectively the subjects of *Smritya-adhikarana*, *Vikalpadhikarana* and *Kalpa-sutradhikarana* of the Mimansa The Smritis also contain a few rules, but they are meagre and mainly relate to cases of conflict. But Jaimini's Sutras deal fully with the rules of interpretation with reference to both the questions, *e.g*, that of determining the meaning and interpretation of words and sentences, and of ascertaining their precise legal character. The rules and principles dealt with by the sutras may be divided into the following five classes:—

Classification of the Mimansa rules of interpretation.

Class I. Certain elementary principles which may be called the axioms of interpretation.

Class II. General principles as to the interpretation of words and texts.

Class III A large number of specific rules and settled points called Nyayas (maxims), each applying to a particular case.

Class IV. Certain broad and general principles as regards the application of texts.

Class V. Certain rules specially bearing upon the *character and interpretation* of Smriti texts and usages.

These five classes have been elaborately dealt with in the following chapters.

The **axioms** are such elementary propositions regarding interpretation as are taken to be self-evident. The **general principles** are those principles which are arrived at after an examination of those materials with which an interpreter has generally to deal, such as, meaning of words, structure of sentences, the relation of topics, *etc.* The **Nyayas** are formulas applicable to particular cases or specified circumstances.

CHAPTER II

AXIOMS OF INTERPRETATION

SECTION 1. INTRODUCTION

Axioms explained: their classification.

The elementary principles or the axioms of interpretation which precede its general discussion, must be treated first. They are called axioms, as they, *i. e*, the Mimansa self-evident principles and the Mimansa general principles regarding words and sentences, bear on the specific Mimansa propositions called the Nyayas, or maxims, in the same way as axioms, postulates and general principles of the properties of figures bear on the specific propositions of Euclid. These axioms are:

I. **Sarthakya**—*Every word and sentence must have some meaning and purpose.*

II. **Laghava**—*Where one rule or proposition would suffice, more must not be given.*

III. **Arthaikatva**—*To a word or sentence occurring at one and the same place, a double meaning should not be attached.*

IV **Gunapradhana**—*If a word or sentence which, on the face of it, purports to express a subordinate sense clashes with the principal idea, the former must be adjusted to the latter or altogether disregarded.*

V. **Samanjasya**—*Contradiction between words and sentences is not to be presumed where it is possible to reconcile them.*

VI. **Vikalpa**—*When there is a real contradiction, one of the contradictory matters may be adopted at option.*

SECTION 2. SIX AXIOMS OF INTERPRETATION

First axiom: Sarthakya.

"Every word and sentence must have some meaning and purpose attached to it." Karika has explained this axiom in a very few expressive words, "More words, more meaning". शब्दाधिक्यात् अर्थाधिक्यम् । It means that if the sense which is attached to a passage is borne out by a part of it, then the remaining portion must give an additional sense, otherwise the construction would be defective. The mistake of interpreting a passage so as to leave some part of it without any meaning is called *Anarthakyadosha* or the fault of assuming

Anarthakya.

meaninglessness. While dealing with the subject of Arthavada, Jaimini puts the objection thus, "whatever enjoins an action is *Amnaya* (Veda), but there are numerous passages which do not contain such an injunction; they must, therefore, be *Anarthaka* (meaningless). Hence the Vedas, having this *Anarthakyadosha*, cannot claim the perfection of eternity." **आम्नायस्य क्रियार्थत्वादानर्थक्यमतदर्थानाम्** [I. ii. 1]. The answer is: "They are not meaningless, each of them is part and parcel of some Vidhi (command enjoining action). Thus it is an expatiation of some particular Vidhi. This expatiation (*stuti*) expresses a meaning." **विधिनात्वेकवाक्यत्वात् स्तुत्यर्थेन विधीनां स्युः।** [I. ii. 7]. Expatiation or '*stuti*' is taken as the equivalent of *Prashestya*, meaning 'that which makes a thing clear.' Such passages make the meaning and purpose of a Vidhi explicit.

Vidhibannigadadhikarana.

The same elementary principle of Anarthakya and Arthakya is applied to the illustrative maxim called "Vidhibannigadadhikarana" (a declaration appearing like a Vidhi). It would be better illustrated by the following passage as given by Jaimini [Bk. I. Ch. ii, Sutras 22—24]: "The Indian fig tree becomes the sacrificial post, it is strong; strong animals are available; therefore, a strong animal is to be had to match the strength of the sacrificial post."

औदुम्बरोयुपोभवत्युर्गवा उदुम्बर उर्कपशव उर्ज्जैवास्मा उर्जं पशूनाप्नोति उर्जोवरुध्यै इति। [Jaim. I. ii. 19]

The objector says: "Here in this passage there is clearly an indication of duty enjoined by the concluding part of the passage, if not, the whole passage, as a declaration would be meaningless (Anarthakatva)." **विधिर्वास्यादपूर्व्वत्वाद्वादमात्रंह्यनर्थकम्॥** [Jaim I. ii 19]. The author replies: 'No doubt the passage has the appearance of a Vidhi, but it is really a declaration extolling the virtue of a fig-tree; for, to regard it as a Vidhi would be to make other Vidhis useless and redundant."

Illustrations from Digests:

Digest writers have also availed themselves of this principle as is evident from the following **examples**:

Jimutavahana discusses the meaning of the passage of Katyayana [Colebrooke's work Ch. II. Sec. 67], "A father is the taker of a double share or of a half from acquisition of son-property." **द्व्यंशहरोऽर्द्धहरो वा पुत्रवित्तार्जनात् पिता।** [Day. Ch. II. 67].

The construction put by Jimutavahana on this passage is that "a father takes either a double share or a moiety of his son's acquired

wealth," पुत्रस्य वित्तार्ज्जनात् पितुर्द्व्यंशहरत्वं अर्द्धहरत्वं वेत्यस्यार्थः [Daybhga II. 66].

In interpreting the passage in this way he refutes the other interpretation that the father is entitled to a double share or a half of the property, if he has got both the son and the property. The effect of this construction would be that one who has not got a son to share with, would take the whole property and he indignantly points out, 'But is not this some thing meaningless.' For it is an admitted rule that in cases of partition among relatives, say brothers, if one has acquired wealth and has no son, he takes a double share of his acquisition, why then this redundant proposition regarding the son? In short, he says that if Katyayana meant by the expression 'from acquisition of son-property' to say 'from the fact of having acquired both son and property' and not 'from property acquired by the son,' then he would be guilty of *Anarthakya-dosha* (fault of redundancy), for there is already the general rule that one who has acquired property and who has got relatives to share it with takes a double share.

In paragraph 79, chapter II, Jimutavahana again says: " Besides, if the mention of greater or less shares here intend the regulated deductions, the second verse of the stanza 'let him separate his sons according to his pleasure' becomes superfluous; for that, which was to be declared, is fully specified in three other verses of that text. But, according to our interpretation, the phrase, 'let him separate his sons according to his pleasure' relates to his own acquired wealth; while the allotment of the best share, and an equal distribution, both relate to an estate inherited from the grandfather There is consequently nothing superfluous."

किञ्च उद्धाराभिप्रायेण समन्यूनाधिकत्व वर्णने इच्छया विभजेदित्यनर्थकं पदं एतदितरपदत्रयेणैव वक्तव्य स्याभिहितत्वात् अस्मन्मते तु इच्छया विभजेदिति स्वोपात्त धन विषयं श्रेष्ठांशता समानांशतयोस्तु पैतामह धनगोचरत्वमिति न किमप्यनर्थकम् ।

Then again in para 8, section 1, Chapter XI, Jimutavahana emphasises the principle by which an interpretation involving an assumption of tantalogy is to be avoided. Regarding the widow's right of succession he says: "The meaning, therefore, is, 'the wife shall obtain her husband's entire share' not 'she shall obtain her own entire share;' for the direction, that 'she shall obtain' would be impertinent in respect of her own complete share. Since the intention of the text is to declare a right of property it ought not to be interpreted as declaring such right in regard to the person's own share; for, that is

known already from the enunciation of it as that person's share, and it need not, therefore, be declared]."

भर्त्तुः कृत्स्नमंशं पत्नी लभेत न तु स्वांश कृत्स्नमित्यर्थःकृत्स्न स्वांशोद्देशेन लभेतेति विधानानुपपत्तेः स्वामिभाव ज्ञापनार्थत्वादस्य न च स्वांशे स्वामिभावज्ञापनमर्हति स्वांश ज्ञापने नैव ज्ञातत्वात् [Dayabhaga Ch. XI Sec. I]

This first axiom has been universally recognised in other systems of law as well, and there is a leading English case, *Reg* v. *Bishop of Oxford* (L R. 42 Q. B D. 245) in which it has been held : " A statute ought to be so construed, that if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant."

Similar axiom in the English system.

" *The construction which makes the meaning simpler and shorter is to be preferred.*" गौरवः दोषः It enunciates the simple rule that when one rule or proposition would suffice, more must not be assumed. Madhvachariya explains the principle in his first Adhikarana of Ch. I. Bk. II and quotes the following slokas of Jaiminiya Nyayamalavistara II, *i*, 1. :

Second axiom: Laghava.

विधिवाक्यं पदैः सर्वैरपूर्वंप्रतिपाद्यते ।
प्रत्येकमथवैकेन सर्वैस्तत्प्रतिपादनम् ॥
फलान्वयित्वात्सर्वेषां प्रधानान्वयलाभतः ।
लाघवादेक वोध्यत्वं तच्छेषस्तुपदान्तरम् ॥

"The Apurva sanction of a Vidhi proposition is made out by all terms composing it."

"Whether by each term separately or by one term out of them is the question." The answer is : " By investigating the relation of the *fruit* (Apurva-sanction) it is found to belong to a single term which is the principal one to which others are subordinate."

"This being the simple construction, the Apurva appertains to one term, the rest forming its train."

He then explains that if Apurva be ascribed to each term, it would involve the fault of 'Gaurava' (useless multiplicity) ; whereas, ascribing it to one term only constitutes it 'Laghava' (simpler construction) and is, therefere, to be preferred. This is the explanation of Gaurava as given in Nyayamalavistara.

The Holaka maxim is the outcome of this axiom. When a Vedic rule (Srauta Vidhi) is to be presumed as corresponding to a rule of the Smritis or a matter of usage, it must be in the simplest and most general form. For example: "Let the usage of the Holaka be observed."

III—7

It should not be allowed to deal with other complexities as to where or how it should be observed. According to our Mimansakas the Vidhi should be short and simple ; and complicated questions incidental to a Vidhi may be dealt with by rules of the nature of Prayoga Vidhis.

Jimutavahana's explanation of the Gaurava principle may now be considered in connection with the illustration relating to the division among brothers, of wealth acquired by exertions *etc.* of one brother. A number of texts collected from the Smritis and taken together show that what is gained by the valour or exertions of one brother with the aid of the common stock should be brought under partition, the acquirer merely taking a double share But when a property is acquired by the exertions of one brother without the aid of the common stock that property as well as affectionate gifts to him should not be partitioned as they are his self-acquisitions. Jimutavahana then raises a question as to how the law on the subject is to be expressed whether all the cases in which property is not to be partitioned among others are to be stated and then other cases in which property may be subject to partition be set-forth ? He himself answers that it would involve serious complication and, following the Holaka maxim, states the rule in a simple form : "Divide the wealth acquired with the use of the common stock." It would include cases in which property was acquired by valour and skill *etc.* of one brother with the aid of the common stock but would exclude all cases in which it was acquired either by valour or otherwise, without the aid of the common stock. The English system of jurisprudence also lays down that construction should not be burdensome.

Third axiom: Arthaikatva.

"A double meaning should not be attached to a word or sentence occurring at one and the same place."

This axiom should be considered first in connection with the interpretation of words and then in connection with that of sentences. As regards a word or a clause it is evident that if it occurs at different places, it may have different meanings, but when used at one and the same place it cannot bear different sense. This has been aptly expressed in the proposition, " A word once uttered must have only one meaning."

सकृदुच्चरितः शब्दः सकृदेवार्थं गमयति ।

The following illustration from the Dayabhaga explains this axiom better :—

(1) " The *mother* should be made an equal sharer." समांशहारिणी

माता [Ch. III. Sec. 1. 29]

Jimutavahana says, "since by the term 'mother' is intended the natural parent, it cannot also mean a step-mother. For a word employed once cannot bear the literal and metaphorical senses at the same time." [Ch. III. Sec. 1. para. 30.]

समांश हारिणी मातेतिवचनात् मातृ पदस्य जननी परत्वात् न सपत्नी मातृपरत्वमपि सकृत् श्रुतस्य मुख्यगौणत्वानुपपत्तेः ।

Vakyabheda from ambiguity of words.

As regards sentences, it is clear that when a word is used in two senses, the whole sentence in which it is so used will have a double meaning. This use of a word in a double sense is termed *Vakyabheda i.e.*, splitting a sentence.

The expressions उद्भिदा यजेत *Udbhida Yajeta* (perform the ceremony by the vegetable) and श्येनेन यजेत *Shyenena Yajeta* (perform the ceremony by the hawk) will illustrate the point. If *Udbhida* the vegetable or the term *Shyenena* the hawk be taken to be the names of ceremony as well as to denote the use of vegetable products in the case of the one and the use of the hawk in the other, then there would be the error of *Vakyabheda* according to the Mimansakas. So they say that in order to avoid this fault these terms must be taken as proper names of certain ceremonies without any reference to their denotation.

A sentence (*Vakya*) is defined by Jaimini (II. i. 46) to be, "a proposition containing a single idea, but where the expression of that idea is divided into parts, each part stands in need of the other or others."

अर्थैकत्वादेकं वाक्यं साकाङ्क्षं चेद्विभागे स्यात् ॥

Thus the fundamental rule of composition in Sanskrit literature is that there should be only one leading idea in one sentence. A single *Vakya* cannot be interpreted to contain two co-ordinate ideas so as, in effect, to make it as if it were, two Vakyas. The splitting up of a sentence in this way is called *Vakyabheda*. "Where it is possible to take a sentence as embodying a single idea or a single proposition, it is wrong to attribute two ideas or two propositions to it." सम्भवत्येकवाक्यत्व वाक्यभेदो न युज्यते Jaimini has very clearly laid down this proposition in Sutra 25. Ch. II. Bk. I., "If in the text which is the subject of *Vidhibannigadadhikarana* the last portion be read as a Vidhi as well as the first portion, then this will cause the fault of *Vakyabheda*." विधौ च वाक्यभेद : स्यात् ॥

The effect of this principle of presuming a sentence to have only one leading idea is that where a word or a clause expresses an

injunction, the other connected part or parts must be treated as subsidiary clauses (*Vakyashesha*) and as mere Arthavadas. An 'Arthavada' clause cannot therefore be allowed to be raised to the rank of an injunction (Vidhi) as in that case it will amount to giving a double meaning to one and the same clause. In later law-books, such as, of Vijnaneshwara and Jimutavahana, the texts of the nature of an Arthavada are usually called moral precepts as opposed to Vidhis proper. A moral precept is a proposition to indicate some salutory truth which is involved in a Vidhi, and so it is practically of the nature of an Arthavada. When Jimutavahana discusses that text regarding the duty of an owner not to alienate his property to the detriment of the interests of his children and others, he speaks of it only as imposing a moral duty, not in any way derogating from his right of full ownership. He in fact regards the text in the light of an Arthavada and, as such, would not allow it to be reckoned as a Vidhi affecting the Vidhi creating ownership.

Fourth axiom: Gunapradhana.

"*If a word or sentence purporting to express subordinate idea clash with the principal idea, the former must be adjusted to the latter or must be disregarded altogether.*"

This principle is generally expressed by the maxim "the great and the small fish' *i. e.* the great fish eating up the small. In Sutra 9 Ch. III, Bk. III of Jaimini, we come across the following :

गुणमुख्यव्यतिक्रमे तदर्थत्वात् मुख्येन वेद संयोगः ॥

"When a *Guna Sruti* (auxiliary clause) clashes with a *Mukhya Sruti* (mandatory clause), the latter is to prevail as Veda."

Jaimini again lays down in Sutra 39 Ch. III, Bk VI : इज्यायां तद्गुणत्वाद्विशेषेण नियम्येत ॥

"*When a purpose and a material conflict, the purpose is to be given effect to (somehow) in the absence of another suitable material, for materials are accessory as regards the primary object.*"

K L. Sarkar in his learned treatise (at p. 90) has very nicely explained how *Uha* and *Badha* illustrate this axiom : "Here the conflict spoken of is between the purpose of a Vidhi and a material expressly prescribed for use in it. Even in such a case where there is an express provision for a material, the material is either to be modified or done away with when it is found to militate against the purpose. The application of this axiom is very largely illustrated by what are called Uha and Badha. *Yajnas* which are called *Vikriti* and which owe their origin to some imperfect Vidhi text have to draw upon the

Uha and Badha, illustrations of this axiom.

stock of some other *Yajna* for their details. Thus details must be modified to suit the Vidhi text of the *Vikriti Yajna* formed as above. When the detail consists of the application of a particular Mantra, the language of such a Mantra must be modified to suit the *Vikriti Yajna*. This among other things is called Uha. When parts of the detail to be borrowed as above, are altogether inconsistent with the main *Vikriti Yajna*, such parts are to be dropped off. This is called Badha. Uha and Badha will be fully explained later on. Here I refer them to show that they are illustrations of the axiom that what is auxiliary on the face of it should be modified or given up to suit that to which it is or should be auxiliary."

"In the Vedic law the Utpatti Vidhi or that which directly enjoins an act for acquisition of heavenly bliss is the principal (*Mukhya*) law. Injunctions regarding appliances to carry out the above act are called Viniyoga Vidhis. So these are comparatively subordinate. Then there is another class of Vidhis (rules) which merely lay down the manner in which the Viniyoga Vidhis are to be carried out. These are called Guna Vidhis, which are clearly subordinate. They are subordinate in the second degree, being subordinate to the Viniyoga Vidhis which are themselves subordinate to the Utpatti Vidhi. Then again. Arthavadas and Namadheyas, as explained before, are subordinate in a still greater degree. In a case of conflict between the text of a lower grade and one of a higher grade, the former must yield to the latter."

"The above phraseology, no doubt, is peculiar to the Vedic law.

The axiom holds good equally with the Vyavahara law.

But the same principle of adjustment applies to the positive law contained in Vyavahara Kanda of the Smritis. It is only in respect of the nomenclature that the Vedic law and the Vyavahara law differ. In the Vyavahara law, practically there is no Utpatti Vidhi. The Vidhis of the highest and perfect obligation in the Smritis correspond to the Viniyoga Vidhis of the Vedas. But all the same there is the distinction in the Vyavahara law between a principal Vidhi and a subordinate Vidhi; for instance, as regards adoption the provision regarding the act of adoption is of higher importance than the Vidhis setting the details of the manner of adoption. So, if in any case a rule regarding the details should have the effect of upsetting the principal rule enjoining adoption, the rule regarding the details must give way. You have instances of this in the Law of Adoption. Of course express and clear subordinate rules have the same force as the principal rules when there is no conflict."

Fifth axiom: Samanjasya.

"*Contradiction should not be too easily assumed.*" Jaimini has laid down this principle in his

first book in Sutra 9 Chapter II thus : "The inconsistencies (you assert) are not actually found. The conflicts consist in difference of application (of the injunction) The real injunction is not affected by application. Therefore there is consistency."

अप्राप्ता चानुपपत्तिः प्रयोगे हि विरोधः स्याच्छब्दार्थस्त्वप्रयोगभूतस्तस्मादुपपद्येत।

This principle means that the proper course for reconciling apparently conflicting texts is to see whether they apply to different sets of facts and to different purposes. The conflict or the contradiction between texts is generally apparent and it can be reconciled by treating one as an Arthavada. Jaimini, in the second Adhikarana Ch. VIII, Book X has stated that although apparently the prohibition of the two *ajyabhagas* (*Tan pasau*) in the Soma Yaga is contradictory to the character of that Yaga, yet it is really not so. There is no provision for Ajyabhaga in the Soma Yaga, therefore, the prohibition is merely an Arthavada in praise of the Yaga making explicit what is implicit.

Reconciliation by Arthavada principle.

नतौ पशौ करोतीत्यादि निषेधस्यार्थवादताधिकरणम्।

अपूर्वे सोमे नैव आज्यभागौ प्राप्तुतस्तन्मात्र प्रतिशोधः।

प्रशंसार्थः सोमे आज्यभागौ न क्रियेते पशावपीति। [Jaimini X. viii. 2 Savara Bhashya].

The Sutra, the basis of the Adhikarana distinctly says : " (In a case of conflict) with what is an Apurva Vidhi the conflicting text (should be taken as an Arthavada)". **अपूर्वे चार्थवादः स्यात्।** [Jaimini X. viii. 5]

It is a very difficult task to reconcile a positive and a negative text, and for this purpose one has to see the character of the negative text. If it is in the nature of a Pratishedha (prohibition pure and simple) it would be very difficult to reconcile it with a text affirming the thing prohibited. But if it is a Paryudasa (a qualified or partial prohibition) which Jaimini treats as merely an Arthavada, there will be no conflict. In some cases a Paryudasa is only a Niyama in the sense of not being imperative. A positive Vidhi may be either imperative or directory or one laying down a Kratu Dharma (positive duty) or a Manushya Dharma (moral duty). Similarly a negative Vidhi may be of either character.

An illustration : Jimutavahana used Paryudasa as an exception in para 36. sec. 1, Ch. VI where he says that if the several texts regarding self-acquisition are Paryudasa (exceptions), then all possible cases of self-acquisition must be regarded as exceptions to partible property. In the next para 37, he says that the several texts regarding self-acquisitions are not meant as exceptions, but are given only as illustrative cases. In the latter para he observes that where

there is a negative rule embodying a number of instances, but there is no exhaustive enumeration of the cases which are intended to be covered thereby, the negative rule cannot be a Paryudasa. The instances are merely in the nature of an Arthavada of a negative character.

Reconciliation by referring to different subject matters.

This conflict may also be removed by interpreting the texts as referring to different subject matters: The following illustration will explain the point. With regard to the right of sons born after partition Jimutavahana has cited two sets of texts apparently not consistent with each other. One of the sets is as follows: —

ऊर्द्ध्वं विभागाज्जातस्तु पित्र्यमेव हरेद्धनम्।
संसृष्टास्तेन वा ये स्युर्विभजेत स तैः सह ॥

" A son, born after a division shall alone take the paternal wealth; or he shall participate with such [of the brethren,] as are re-united with the [father]." (Manu and Narada).

विभक्तजः पित्र्यमेव ।

" A son, begotten after partition, takes exclusively the wealth of his father." (Gautama).

पुत्रैः सह विभक्तेन पित्रा यत् स्वयमर्ज्जितम्।
विभक्तजस्य तत् सर्व्वमनीशाः पूर्व्वजाः स्मृताः॥
यथा धने तथर्णेऽपि दानाधानक्रयेषु च ।

" All the wealth which is acquired by the father himself, who has made a partition with his sons, goes to the sons begotten by him after the partition. Those, born before it, are declared to have no right; as in the wealth so in the debts likewise, and in gifts, pledges and purchases." (Vrihaspati).

The other set is :—

पितृविभक्ता विभक्तानन्तरोत्पन्नस्य विभागं दद्युरिति ।

" Sons, with whom the father has made a partition, should give a share to the son born after the distribution." (Vishnu)

विभक्तेषु सुतो जातः सवर्णायां विभागभाक् ।
दृश्याद्वा तद्विभागः स्याद् आयव्ययविशोधितात् ॥

" When the sons have been separated (after their father's death) one afterwards born of a woman equal in class, shares the distribution. But the allotment of a son (in the womb not known to any at the partition), must positively be made, out of the visible estate and he will get the surplus of the income after deducting the expenditure of the father's share." (Yajnavalkya II, 122).

Jimutavahana reconciles these two sets of texts by saying that the former set applies to cases of self-acquired property of the father,

in which case the partition by the father is a matter of his own choice, and that the latter set applies to the case of property descended from the grandfather in which case a partition effected before the mother is past child bearing age is not recognised as valid.

Sixth axiom: Vikalpa. *"When there is a real contradiction, one of the contradictory matters may be adopted at option."*

The contradiction can be explained when one of the two texts is a Paryudasa (exception) or where they are referable to different sets of facts, as explained above But in case of real contradiction between Vedic texts they are placed at the discretion of those whom they concern and the principle of option has been allowed by the Mimansakas as a last resort. The Smritis are of a derivative authority from one and the same Vidhi-command, so the interpreter is bound to reconcile them.

The exercise of option would be allowed only when the conflict between two Vedic Vidhis which are of a co-ordinate character, is clear, patent and direct, and the positive Vidhi must be one addressed to the senses. Jaimini's third Adhikarana, Chapter VIII, Book X, illustrates this point by reference to the use of the *Shorashi* vessel at the dead of night, in one of which the use of it is enjoined and in the other prohibited. नातिरात्रेगृह्णाति षोड्षिनमिति निषेधस्य विकल्पकृपताधिकरणम् When there is direct and clear conflict the one or the other text can be followed at one's option.

The case of option does not arise when a negative Vidhi does not contain an absolute prohibition (Pratishedha) but merely a qualified prohibition (Paryudasa). By way of illustration reference may be made to Jaimini's first Adhikarana Ch. VIII, Bk X, the leading clause of which contains the general injunction for the performance of a certain act *viz.* uttering certain words in a certain transaction with a clause added to it prohibiting that act in a part of the same transaction महापितृ यज्ञे …… ये यजामहे इति पञ्चाक्षरं करोति नानुयाजेषु यजामहं करोति. This prohibition is a Paryudasa and a sort of an exception, so there is no conflict, and no question of option arises in this case.

English Law. According to the English principle of interpretation, if one provision of law is contradicted by a subsequent one, the latter provision prevails as having a repealing character. In the Vedas there is no such presumption of one command being subsequent to another in point of time. Option is allowed where the contradiction cannot possibly be explained away. It is allowed only as the last resort as option means ignoring the authority not only of one but of two texts.

CHAPTER III

GENERAL PRINCIPLES OF THE MIMANSA RULES OF INTERPRETATION

SECTION 1. INTRODUCTION

The general principles of the Mimansa rules of interpretation in the words of K. L. Sarkar, the learned Tagore Law Professor (*x*), are as follows :—

I. Sruti. When a verb and the case governed by it have a self-evident meaning and thus form a complete and independent sentence, this is called a *Sruti*; no attempt should be made to strain or twist its meaning. This may be called the Sruti principle of construction (*a*).

II. Linga. When the meaning of a word or expression is not clear on the face of it, and its latent force or suggestive power has to be brought out by the suggestive power of some other word or expression, this is called a *Linga*; and this principle of construction may be called the Linga principle (*b*).

III. Vakya. Where what is apparently a complete sentence has, in order to make out a satisfactory sense, to be read as part of a sentence connecting it with some other clause, this is called a matter of Vakya or syntactical arrangement. The principle of construction consisting of this process is called the Vakya principle of construction (*c*).

IV. Prakarana. When a sentence or clause by itself does not indicate its purpose but its purpose becomes clear when read with some other text appertaining to some other topic, this is called a case of Prakarana. The principle of construction herein involved is called the Prakarana principle of construction (*d*).

These principles form the science of interpretation of the Hindu system of Law and they are its backbone.

(*x*) Page 99.

(*a*) Sabara Bhasya III. iii. 14, p 313 Jibananda's Edition; Laugakshi Bhaskara, p. 5; Partha Sarathi Misra's Shastra Dipika p. 229; Apadeva, p. 14 Jibananda Yidyasagara's Edition.

(*b*) Sabara Bhasya III, iii, 14. Jibananda Yidayasagra's Edition p. 313; Laugakshi Bhaskara p. 6; Salikanath Misra's Prakarana Panchika, p. 3 (Benares edition); Apadeva's Mimansa Nyaya Prakasha. p. 19; Modhatithi's Commentary on sloka 3, Ch. 1, Manu.

(*c*) Sabara Bhasya III, iii, 14; Jibananda Vidyasagar's Edition p. 313; Langakshi Bhaskara p 7; Kumarila Bhatta's Tantra Vartika p. 535; Apadeva's Mimansa Nyaya Prakash p. 22; Jibananda Vidyasagara's Edition; Raghunandana's Prayaschittatatva p. 480.

(*d*) Sabara Bhasya III, iii, 14; Laugakshi Bhaskara p 8; Apadeva's Mimansa Nyaya Prakasha p 26; Jibananda Vidyasagara's Edition; Raghunandana's Prayaschittativa p. 479.

SECTION 2. THE FOUR PRINCIPLES

The four principles explained.

The term Sruti has a wide meaning in Shastric Literature. It is treated as a synonym of the Vedas, but it has been used in a special sense in the Mimansa, where the term Veda or Amnaya आम्नायः is used in place of the Vedas. Sruti is always used to refer to a passage of the Vedas which clearly expresses its meaning and intention as soon as it is pronounced, *e. g.*, Savara Bhashya III. iii. 14 p. 313 (Jibananda's edition) यदर्थस्याभिधानं शब्दस्य श्रवणादेवावगम्यते स श्रुत्यावगम्यते श्रवणं श्रुतिः । Sruti is a text which requires no extraneous aid for its meaning to be understood. Parthe Sarathi Misra in his treatise, 'Shastradipika' (p. 299, Benares edition) says, "When an expression is capable of application on the bare hearing of it, it is a Sruti." Laughakshi Bhashkara and Apadeva define Sruti to be "an independent pronouncement" निरपेक्षः रवः श्रुतिः

The expression literal construction is, therefore, equivalent to the Sruti construction of the old Aryans. Kumarila Bhatta would not call any text Sruti unless it gives a clear sense on the Body of it. He says, "The sense in Sruti is on the face of it, while the sense in a Vakya is far-fetched." श्रुत्यर्थः सन्निकृष्टत्वं वाक्यार्थो विप्रकृष्टता । [Tantra-vartika p. 535, Benares edition]. The same idea has been expressed by Maxwell (at p. 4) in the following passage :

"When the language is not only plain but admits of but one meaning, the task of interpretation can hardly be said to arise. It is not allowable, says Vattel, to interpret what has no need of interpretation. *Absoluta sententia expositore non eget.* Such language best declares, without more, the intention of the lawgiver, and is decisive of it."

According to the old Sanskrit composition, a Vidhi proposition must be short and simple containing a nominative case, a transitive verb and an objective case. When there is no doubt about the meaning of the verb and the objective case, the sentence is clearly a Sruti. For example : ऐन्द्र्या गार्हपत्यमुपतिष्ठते । "By the Mantra addressed to Indra establish the household fire." The expression 'establish the household fire' is clear and explicit; so it is a Sruti.

Importance of the Sruti principle.

The cardinal principle of interpretation is that where an independent proposition is stated in clear grammatical language, that proposition must be accepted as it is, however disagreeable it may be. The interpreters cannot twist and distort it to suit their own views. This is called the literal principle This principle has been admitted by the author of

the Aphorisms of hoary antiquity and has also been recognised by modern civilized countries. Jaimini [III. iii. 14] says that where this rule is applicable, no other rules of interpretation should be resorted to. **श्रुतिलिङ्गवाक्यप्रकरणस्थानसमाख्यानां समवाये पारदौर्बल्यमर्थविप्रकर्षात् ॥** In other words, the literal construction or Sruti construction is a principle which deprecates artificial construction. In cases when the language is not clear or the sense is not explicit or when the words are ambiguous in sense, or the sense is dependent on some other idea, the interpreter may have recourse to other methods of construction.

English Law.

The principle of literal construction has been recognised by Maxwell also who says :—

"Where, by the use of clear and unequivocal language, capable of only one meaning anything is enacted by the Legislature, it must be enforced, even though it be absurd or mischievous. If the words go beyond what was probably the intention, effect must nevertheless be given to them. They cannot be construed, contrary to this meaning, as embracing or excluding cases merely because no good reason appears why they should be excluded or embraced. However unjust, arbitrary or inconvenient the intention conveyed may be, it must receive its full effect. When once the intention is plain it is not the province of a court to scan its wisdom or its policy. Its duty is not to make the law reasonable, but to expound it as it stands, according to the real sense of the words."

Relative force of the four principles.

Linga, Vakya and Prakarana are rules of interpretation of an artificial character as compared with the Sruti rule. Linga determines the meaning of a word or a clause in the light of another word or another clause, without joining the other word or the clause to it as part and parcel of the same sentence. **यत् तावच्छब्दस्यार्थमभिधातुम् सामर्थ्यं तल्लिङ्गम् ।** [Savara Bhashya III. iii. 14.]

Laugakshi Bhaskara has also explained this 'suggestive power' **शब्दसामर्थं तल्लिङ्गम् ।** According to Savara Bhashya (III. iii. 11), Vakya is the principle of making out a proposition by reading together apparently disjointed words and clauses **संहृत्य अर्थमभिदधति पदानि वाक्यम् ।** So Vakya relates to the structure of the sentence, while Linga relates to the meaning of which a word or sentence is susceptible from appearance. Savara Bhashya (III. iii. 11) explains Prakarana as the principle where a clause is subordinate on the face of it, occurs isolatedly without its principal and is connected by the logic of the subject with some principal clause which is more or less incomplete without it.

असंयुक्तं प्रकरणात् इतिकर्तव्यतार्थित्वात् यत् असंयुक्तं श्रुत्या लिङ्गेन वाक्येन वा तत् प्रकरणात् इतिकर्त्तव्यतार्थित्वात्। Laughakshi Bhashkara also says उभयाकाङ्क्षा प्रकरणम्। K L. Sarkar (at p. 103) has explained their relative position thus: "Linga requires extrinsic light in the shape of what is suggested by something else. The Vakya requires the addition or insertion of some wanting links in the shape of words or clauses and the Prakarana requires reference to an object or purpose elsewhere expressed. In all the three cases there is a want or susceptibility in the word or clause which engages your attention, and that want or susceptibility is satisfied by something outside. But what is a Sruti has no want by its definition. So when a clause or sentence that engages your attention is a Sruti *i. e.*, independent and clear in meaning, you need not resort to the other modes of construction. You will further see that when the text that engages your attention is not a Sruti *i e.*, not absolutely clear in meaning, that next least onerous method to determine its meaning is by the light or the suggestive power of other clauses (Linga), and not by trying to reconstruct the sentence by bringing in other words or other clauses. This latter process (Vakya) should only be resorted to failing the former. Again, if an object and purpose of a clause or sentence be found by either availing of some extrinsic light (*i. e.* by the Linga) or by reading the clause or sentence with words or clauses added to it in a proper manner (*i. e.*, by the Vakya), then one should not proceed to seek its purpose and object elsewhere ...... In each of the three cases there is a want and a supply of that want, but the thing wanted is different in each case. In the case of the Linga what is wanted and supplied is a certain light regarding the significance or the effect of certain words In the case of Vakya, however, there is an expectancy *Akanksha* in a phrase or clause for some other phrase or clause which together with the former would express one complete idea, in other words, would constitute one complete sentence. So here the want is of some words or phrases. Again in the case of Prakarana the want is that of a purpose in a clause or sentence representing a detail, while there is another clause or sentence which has the purpose but which is more or less in need of the detail."

Kunte, the author of Saddarshanachintanika (at p. 687-691) also remarks:

"The Mimansakas define Sruti or a direct statement to be a word or a sentence which at the first sight conveys its sense, about the interpretation of which no argument or reasoning is necessary, which does not necessitate the analysis of compound terms or the consideration of its etymology. They define Linga to be that which involves the

consideration of the derivation and etymology of a word, and employs inference in settling the sense either of a word or a sentence. One consistent sense is conveyed to the mind by a variety of words bearing different relationships to one another, and arranged in an order prescribed by the rules of grammar. The evidential power of such a sense is exegetically called a Vakya, which we have translated by the *syntactical construction of a sentence.* It is recognised by the Mimansakas as method of proof interpreting a passage. Why is the syntactical construction or its exegetical power considered to be a method of exegetical proof by the Mimansakas? Because in interpreting a passage, it is necessary to determine whether a given sentence is a simple or complex, single or compound, subordinate or co-ordinate, divisible or non-divisible sentence ... That method of exegetical proof which examines the relationship between different subjects treated of in a passage, which distinguished the principal subject from those merely subordinate and conducive to its elucidation, and which determines the interpretation of a given passage is called by the Mimansakas Prakarana."

"Each of the three principles, Sruti, Linga and Vakya has a two-fold application. The Sruti is either a word or a sentence the intention of which is self-evident. The Linga is either the implied sense of a word or of a sentence. The Vakya is the making out of a proposition either by joining together apparently disjointed words, or by joining together apparently disjointed sentences" (p. 106).

Laugakshi Bhashkara's explanation of the four principle.

Regarding *Sruti*, Laugakshi Bhashkara (Dr. Thibaut's translation) says:—"Direct statement (Sruti, literally 'text') we define as irrespective of independent words (words which intimate their sense directly without any intermediate steps of the nature of those required by the other means of proof.)" As regards *Linga*, he says, "The suggestive power of all words is Linga" **शब्दसामर्थ्यं लिङ्गम् । यथाहु : सामर्थ्यं सर्वशब्दानां लिङ्गमित्यभधीयते ॥** He defines *Vakya* to be 'syntactical connection.' **समभिव्याहारो वाक्यम् ॥** Dr. Thibaut translates the whole passage as follows: "By sentence or syntactical connection (Vakya) we understand common employment and by this term we understand the connected enunciation of two words denoting two things which in reality stand to each other in the relation of principal and subsidiary, although this is not indicated by second case affixes *etc.*, directly indicating the one of the two things to be the thing to be accomplished by the other *etc.*, (which relations are directly indicated by Vibhakti-Sruti etc.)" *Prakarna* is defined by him to be "the relation of interdependence between passages." **उभयाकाङ्क्षा प्रकरणम् ।**

Apadeva defines Sruti to be "an independent pronouncement." His explanation is the same as that of Laugakshi. He points out that an applicatory Vidhi is a Sruti when its applicatory character is evident on the very pronouncement of the words composing it. यस्य च शब्दस्य श्रवणादेव सम्बन्धः प्रतीयते सा विनियोक्त्री । आपदेवः । Then he shows that *artha* of a word means its self-evident meaning, while *Lakshanartha* means the sense gathered by implication स यत्र हि शब्दस्यार्थो यः प्रकारान्तरेण न लभ्यते अनन्यलभ्यः शब्दार्थ इति न्यायात् अतएव न गङ्गापदस्य तीरमर्थः लक्षणयव प्रतिपत्ति सम्भवात् । आपदेवः । Apadeva has defined *Linga* as *the suggestive power of ideas.*

Apadeva's explanation of the four principles.

It has been shown how an applicatory Vidhi is made out by the suggestive power of ideas, and when so made out, it is implied (*Kalpya*) समर्थ्यं सर्व्वभावानांलिङ्ग । ; while an applicatory Vidhi by Sruti is direct (*pratyakshya*) लिङ्गादिषु नप्रत्यक्षो विनियोजकः शब्दोऽस्ति किन्तु कल्प्यः । As regards the principle of Linga, Laugakshi points out that the suggestive power or the light which indicates the true meaning is to be supposed in the word or clause, the meaning of which is to be explained, while Apadeva says that according to the great Rishi Jaimini himself, it is to be supposed in the word or clause which assists the explanation, and which is distinct from the word or clause requiring explanation. This difference is of no importance as when a word or phrase is explained in the light of another word or phrase, the explanation is effected between the two. The word or phrase requiring an explanation has a latent power (*Sakti*) to explain itself, as it is prone to receiving light from outside.

Apadeva applies the principle of *Vakya* to the case of an applicatory Vidhi in this way that an applicatory Vidhi is direct when a thing enjoined to be used is put as the objective case of the verb expressing command. 'But when it is not so put, as in the case of the text—he whose *Juha* is made of *Parnawood etc*.—here one has to make out by reading all the words of the text together that the making of the *Juha* is the object of an injunction. This is an instance of the Vakya principle. He says that such a case amounts to reading (by importing) a command (*Sheshi*) with the object of command (*shesha*)' [p 103].

समभिव्याहारो नाम साध्यसाधनत्वादि वाचकः द्वितीयाद्यभावे वस्तुतः शेषशेषिणोः सहोच्चारणं यथा यस्य पर्णमयी जुहुर्भवतीति ।

As regards Prakarana, Apadeva says that the object of Prakarana is to show the manner in which an injunction is to be carried out. It cannot indicate the materials which are required for the fulfilment of

the injunction. They must be indicated by a Sruti or a Linga.

सिद्धस्यतुद्रव्यादेः केवलमङ्गत्वं तदपि श्रुत्यादिना नतु प्रकरणात् ।

Kumarila Bhatta's explanation.

Kumarila Bhatta says :—"To take what has a manifest sense in a larger or smaller sense is to incur the fault of attributing inferential or double sense. Therefore this is not to be supposed."

श्रूयमाणस्य वाक्यस्य न्यूनाधिकविकल्पने। लक्षणा वाक्यभेदादिदोषो नानुमितेह्यसौ ।

The enlarged meaning of the word *nirapeksha* 'independent' in the definition of Sruti—"Independent pronouncement is Sruti", has been explained in the following passage [Tantravartika, Ch. III, pada 1. Benares edition p. 669] :—"A Sruti no doubt is expressive of its own meaning. Sometimes, however, it clears up what goes before. Thus though it acts for the benefit of another thing, it is by way of supplying a pre-existing want."

श्रुत्या तावत्तदर्थत्वं कचित्पूर्व्वं प्रतीयते ।
अन्यत्राप्युपकारित्वादपेक्षामात्रपूर्वकम् ॥

Bhatta explains Sruti to be a Vidhi or Viniyoga or an *Ukti* (an injunction, an applicatory proposition or a declaration.) **विध्युक्ति विनियोगाः ।** He interprets Linga to be *Shabdasya Ukti Shakti* (the declaratory force of words) **शब्दस्योक्तिः सामर्थ्यः।** It is clear that in both of these definitions there is *Ukti* or declaration ; so he says that Sruti and Linga overlap each other The following passage may be quoted [*Ibid* p. 839] : "A Sruti being either an injunction or a declaration or an applicatory proposition. each of these is made out by a declaratory force of words and is not without such force. Again, take the instance of Linga in the idea of Indra (implied by the word *Garhapatya*) it is not without the element of Sruti so far as a Sruti is a declaration."

विध्युक्तिविनियोगा हि न विना शब्दशक्तिभिः ।
न चेन्द्र शब्दसामर्थ्यमभिधाश्रुति वर्जितम् ॥

Bhatta thus discriminates between Sruti and Linga and raises the objection that the definitions appear to be faulty and to overlap each other.

He himself also refutes the objection thus : "True apparently they overlap" **सत्यमुभयत्रोभयमप्यस्ति ।** 'But when you understand the proposition usually given as an instance of Sruti, *viz.*, Aindra Garhapatya *etc.*, the understanding is not by the declaratory or suggestive power of any word, but you understand it because its

meaning is self-evident. Also when you understand *garhapatya* to mean *Indra* you do not realise this meaning by the literal principle of this Sruti."

किन्त्वैन्द्र्यागार्हपत्यस्य नोक्तिशक्त्यावगम्यते ।
इन्द्राङ्गत्वमतिश्वास्या नात्र श्रतिकारिता ॥

Further in connection with an applicatory proposition he says: "In one case (*i. e*, in the case of Sruti) in the absence of the suggestive power, the mantra by itself operates as an applicatory Vidhi (*shesha*). In the other, the sense of this applicatory Vidhi not being expressed, the suggestive power is availed of."

एकत्रासति सामर्थे मन्त्रशेषोभिधीयते ।
अन्यत्रानुक्तशेषत्वं सामर्थ्यं संप्रतीयते ॥

Eventually Bhatta lays down the rule that when a word has a clear and obvious meaning, it is a Sruti. But when the meaning is realized by implication, it is the case of a Linga.

Bhatta similarly deals with and discriminates between Vakya on the one hand and Sruti and Linga on the other. He says, "No Vakya whatever can exist devoid of the suggestive power of words, of a declaratory character and in the vicinity of other clauses." नहि किञ्चिदपि वाक्यं शब्दसामर्थ्येनार्थाभिधानेन पादान्तर सन्निधानेन वा विना विद्यते । So a Vakya contains Linga and Sruti as well as its own features of being affected by collocation. This objection is explained thus: "It departing from the self-evident meaning you assume '*Garhapatya upatisthate*' to mean '*Indra upatisthate*' by applying the Linga, in either case there is a Vakya; why then assume superfluous things (Sruti and Linga.)'.

लिङ्गत्वमभ्युपेतं चेदिन्द्रोपस्थानकल्पने ।
उभयत्रापि वाक्यत्वम् कथं भूयोवकल्पते ॥

The following passage answers the objection. "In Vakya the sense is not cleared by suggestive power nor is it a self-evident applicatory Vidhi, being only a proper association of terms directly perceived."

अर्थंप्रति न सामर्थ्यं न च शेषत्वमुच्यते ।
केवलं पदसंघात: प्रत्यक्षमुपलभ्यते ॥

The sense of the above passage is that a sentence which is made intelligible by Linga may be in form a Vakya and so also a sentence which is clear in meaning. But such cases are practically excluded from the Mimansa conception of a Vakya according to which only the

case of making out sense by examining and arranging the collocation of words and clauses is called Vakya (*a*). Accordingly it is said : ' Where devoid of Linga and the like a Vakya serves to give shape to a Vidhi, not, however, when joined with these it merges into nothingness" (*b*).

लिङ्गादिरहिते वाक्ये तदा विधिरुपेयते ।
न कथंचिद् यदा युक्त्या प्राप्तिलेशोऽपि गम्यते ॥

Again it is observed that where so-called clauses had no meaning before, to construe them into a single proposition is Vakya (*c*). यत्तु न प्रागवाक्यादर्थं तदेकत्तावधारणमस्तीति । The following passage from Slokavartika [Adhi. 7, Sloka 92] may be quoted with advantage in this connection: "By Vakya you get as if a special sense by (considering) its own structure." येन स्वार्थाविरोधेन विशेष उपजन्यते ।

Bhatta discriminates Vakya Prakarana thus: the latter is defined to be a passage which has a relation of interdependence with another passage, while in the former also a clause to which other clauses are to be added in order to form a Vakya, stands, so to say, in expectancy (*akanksha*) of such other clauses. There appears no material difference between the two The only difference is that in a Vakya the parts are joined grammatically as members of the same sentence, whereas in the case of a Prakarana there is no such integral organic connection. Thus in many respects a Vakya is a Prakarana plus a syntactical connection, as is evident from Bhattapada (*d*). "In Vakya there is a direct union which is not the case in Prakarana. A Prakarana is brought in by mere want, hence it is inferior to a Vakya" (*e*).
p. 880].

प्रत्यक्षासङ्गति वाक्ये न च प्रकरणेस्तय सौ ।
आकाङ्क्षातोऽनुमातव्या तावता विप्रकृष्टता ॥

The discriminating features of Sruti, Linga and Vakya were originally given by Savaraswami in his learned treatise "the Jaimini Bhashya," subsequently enlarged and annotated by Kumarila Bhatta. The prominent features of these were explained by him by referring to the text: "By Indra mantra establish the *Garhapatya*." This mantra is admittedly a Sruti, and as such not open to construction by the Linga principle. The Swami asks the following questions, " What is that in it which makes it a Sruti ? What is that in it which might make it liable to construction by Linga." [Savara Bhashya III. iii. 14].

Savara Swami.

(*a*) K L. Sarkar Mimansa Rules of Interpretation p. 113.
(*b*) Ibid p. 919.
(*c*) Ibid p 426.
(*d*) Ibid p 850.
(*e*) Ibid p 880.

का पुनः अत्र श्रुतिः ? किं लिङ्गम् ? The above questions are answered thus ; "In the above, Sruti is (appreciating the sense of) the word *Garhapatya* by the very utterance thereof. What again is Linga ? It is the force of the passage :—"Even protect thou Indra and not injure thy servant." By this force Indra is shown to be a particular deity and thus in the text in question *viz., Aindra Garhapatyam upatisthate Garhapatya* might mean *Indra.*"

श्रुतिर्गार्हपत्य शब्दश्रवणम् लिङ्ग पुनः कदाचनस्तरीरसि नेन्द्रसश्चसि दाशुषे इति इन्द्र शब्दस्य विशिष्टदेवताभिधानसामर्थ्यम् ।

"Now what is Vakya ? It is a number of words (or expressions) collectively making out a proposition." **अथ किं वाक्यं नाम ? संहत्य अर्थमभिदधति पदानि वाक्यम् ।** The Swami then goes on to say : "If this be the definition of Vakya then the text, 'By Indra-mantra establish the *Garhapatya*' is also a Vakya. So also is the text—"even protect thou Indra and not injure thy servant." **यद्येवमिदमपि वाक्यम्, ऐन्द्र्या गार्हपत्यमुपतिष्ठते इति, इदमपि, कदा च नस्तरीरसीति ।** He then proceeds to explain that the above two texts should not be treated as Vakyas, although they are Vakyas according to the usual idea. He says: Generally speaking the above texts are Vakyas in-as-much as they consist of a collocation of words, all and each of which make out the sense. You are however to differentiate them, one as a Sruti-Vakya the other as a Linga-Vakya and are thus drawn to find out the difference between a Sruti and Vakya, and a Linga and Vakya."

उभयत्रापि संहत्य अर्थमभिदधति पदानि, तेनवाक्यस्व चैषा संप्रधारणा, न श्रुतिलिङ्गयोः यदि वा श्रुतिलिङ्गवाक्यानि विवक्तव्यानि, इदं श्रुतिवाक्ययोः अन्तरम् इदं लिङ्गवाक्ययोः इति [Savara Bhashya III. iii. 14].

"This difference is stated as follows : That power of words which (apart from its manifest sense) tends to lend expressiveness (to other words) is Linga. Where the communication of the sense takes place from the bare utterance, this is called Sruti; to hear is to understand by hearing."

तदभिधीयते, यत् तावच्छब्दस्यार्थमभिधातुम् सामर्थ्यम् तल्लिङ्गम्, यदर्थस्याभिधानं शब्दस्य श्रवणमात्रादेवावगम्यते स श्रुत्याऽवगम्यते श्रवणं श्रुतिः ।

Therefore, a Sruti-Vakya and a Linga-Vakya are distinguished by Savaraswami and he thinks that of the two texts one is a Sruti-Vakya and the other a Linga-Vakya, but no where he says anything as to what a Vakya proper is apart from a Sruti-Vakya and a Linga-Vakya.

Udichya-Bhattacharya.

Adhikarana Kaumudi is a well known Mimansa work by Udichya Bhattacharya. He takes a Sruti as the operative part of a Vidhi proposition describing in clear terms the thing to be done by means of the second case termination. He himself realises this narrow view of Sruti and quotes the definition as given by Vachaspati Misra : "A Sruti includes all case terminations, each conveying its proper meaning and expressing a clear sense of the proposition without extrinsic help." वाचस्पतिमिश्रास्तु कारकविभक्तिमात्रं श्रुति सर्व्वासामेव विभक्तीनां प्रकृत्यर्थान्वितस्वार्थबोधेऽन्यनिरपेक्षत्वाद्बलवत्वमिति वदन्ति । There is no special treatment of Linga and Vakya which is worth noticing.

Classification with reference to matter and manner.

With reference to matter, the whole range of Vedic texts is divided into : (1) Vidhi positive and negative, (2) Arthavada (3) Namadheyas ; and with reference to the manner of expression, it may be divided into : (1) rules and expressions directly expressed, (2) rules and propositions constructively made out which may further be sub-divided into : (i) Rules and propositions made out by way of Linga or construction with reference to the suggestive power of words and expressions ; (ii) Rules and propositions arrived at by adjustment of syntactical relations or by the Vakya principle ; and (iii) Rules and propositions got out by an adjustment of the purpose indicated by one passage with reference to that indicated by another, both tending to formulate one transaction ; that is to say, by the Prakarana principle. This latter classification or sub-division holds good for the Smriti works as well.

SECTION 2. THE FOUR PRINCIPLES EXPLAINED

I. THE SRUTI OR LITERAL PRINCIPLE

Taittriya Samhita has discussed the text in relation to the superiority of the Sruti to the Linga principle, '*Aindrya Garhapatyam upatishthate.*' ऐन्द्र्या गार्हपत्यमुपतिष्ठते [4. 2. 5. 4] and it has been explained that where the predicate of a proposition is a Sruti as in the above text *Garhapatyam*, or where it is clear and unambiguous in meaning, the fact that a subordinate word in the sentence raises doubts in the mind of the reader is no ground for interfering with the plain meaning of the Sruti. This is a maxim which has been established after fully discussing this matter and has been termed as Garhapatya maxim. This text has been further discussed thus : *Aindrya* means "by means of the Mantra addressed to Indra" and '*Garhapatyam upatishthate*' means 'establish the household fire-god.' It appears unreasonable to worship the household fire-god by means of a Mantra

invoking Indra, so the objection is raised that the word *Garhaptya* should not be taken in its plain and clear sense of house-hold fire-god, but should be understood to mean Indra, as Indra resembles the fire-god and is also a suitable object of worship. The Linga principle applied to another text is "*Kadachana stariasi nendra sachasi dashushe*" which means, 'thou Indra ever preserve us and not destroy your followers." Jaimini [III. ii. 3] has opined that the text being a clear *vachana* (expression), the word *Aindri* cannot prevail वचनात्त्वयथार्थमैन्द्रीस्यात् । It has been further suggested [III. ii. 4] by him that as it is only a subordinate expression, it cannot affect the meaning of the operative expression which is clear on the face of it गुणाद्वाप्यभिधानं स्यात् सम्बन्धस्याशास्त्रहेतुत्वात् ।

The effect of interpreting the text in this simple way is this : there is no ambiguity as to the meaning of the principal word and there is do doubt as regards its intention; the only difficulty is that it is not reasonable to worship one god with a mantra addressed to another. Maxwell has also laid down an identical principle that a clearly expressed intention cannot be modified on account of any apparent unreasonableness. This maxim shows that when the Sruti and the Linga principles produce opposite results, the former is to prevail. Jaimini has clearly explained this in sutra 41, Ch. i, Bk. IV, "when there is an (express) text, considerations of reasons are of no avail." वचने हि हेत्वसामर्थ्यं । The modern Shastric writers have expressed this Sruti principle by the popular saying, "As the expression so the thing expressed" यथावचनं हि वाचनिकं । This maxim means that in interpreting the meaning of an expression one should go only to the extent of the power of expression—neither more nor less. This is the sense of the Sruti principle as understood by the modern authors.

The ordinary instances of Sruti are as follows :

स्वर्गकामो अग्निहोत्रं जुहुयात् ।

" *Swarga Kamo agnihottram Juhuyat.*"

स्वर्ग कामो दर्शपौर्णमासाभ्याम् यजेत ।

" *Swarga Kamo darsa pauranamashabhyam yejeta.*"

A Sruti need not necessarily be a Vidhi. An Arthavada or a Guna Vakya may be a Sruti. It requires no construction; rather it is the key of construing other texts which are not so clear and unambiguous. Thus Sruti serves to explain other passages. Now the question arises as to what is the difference between a Sruti and a Linga. The difference is that, in the Linga, the passage or the sentence which throws light is not a Sruti; when such a passage is a Sruti the

construction is regarded as the Sruti principle. Srutis, therefore, are brought to bear upon other texts to remove doubts not so much as to the meaning of these texts as to the mode in which they are to be applied. The following examples illustrate the point. In Sutra 24, Ch. I, Bk. II, it is said "by joining with the Sruti a certain class of passages is invested with the Apurva sanction in the way of a Prakarana." अपि वा श्रुतिसंयोगात् प्रकरणे स्तौतिशंसतो क्रियोत्पत्तिं विदध्याताम् । In Sutra 5, Ch. ii, Bk. II, the objector says, "Prakaranas which are said to refer to the Paurnamasi are really in the nature of general clauses (Gunas) by virtue of a Sruti" गुणस्तु श्रुतिसंयोगात् । In Sutra 2, Ch. IV, Bk. II, with regard to the question whether the text "Agnihotra should be performed life-long" enjoins perpetual performance of the Yaga or from time to time, *an appeal* is made to another Sruti settling the question in favour of the latter meaning" कर्तुर्वा श्रुतिसंयोगात्।

It is a clear principle that when an authoritative proposition is quite clear and explicit, it is employed to remove doubts in other doubtful cases.

Different designations of four principles.

Our present digests of Hindu Law follow the aforesaid four principles *viz.*, Sruti, Linga, Vakya and Prakarana, but under different designations. For instance, Jimutavahana in para 29, Ch. I, using the Sruti Principle says :—

"Therefore, the text of Manu must be argued [by you] to intend the prohibiting of partition, although the son's right subsists during the life of the father. But that is not maintainable. For it would thus bear an import not its own."
p. 123 (1).

अतो जीवति सत्यपि पुत्राणां स्वाम्ये विभागनिषेधार्थं मनुवचनं वाच्यं तच्चान्याय्यं अस्वार्थपरत्वापत्तेः ।

He means to say thai in the text of Manu the words "they have not power over it, while their parents live" clearly means that the sons have no such right during the life-time of their father. If you ignore this, you are guilty of violating the Sruti principle of interpretation. Lakshna Artha has been used in place of Linga and Upalakshana for Prakarana by the same author.

II. THE LINGA PRINCIPLE

The Sruti or literal principle is one of loyalty and faithfulness, but the other principles are based more or less on critical reasoning. In the legal world, loyalty is of greater importance than critical reasoning. It is on this account that the Sruti principle is preferred to others.

The word 'Linga' has two meanings—a general sense and a special

Mimansa sense like Sruti—one conveying a wide and general meaning to denote any text of the Vedas, and the other a special meaning signifying the literal principle of interpretation. Linga in general means a peculiar sign which is invariably connected with a matter so that the former indicates the latter, while in the Mimansa sense it means the *suggestive power* of **words and ideas**. Laugakshi Bhaskara has defined Linga as being the suggestive power of words **सामर्थ्यं सर्व्वशब्दानां लिङ्गमित्यभिधीयते** । Apadeva has also defined it in the same way, but more comprehensively **सामर्थ्यं सर्व्वभावानां लिङ्गमित्यभिधीयते** । Jaimini and other sutra writers use the term Linga in its comprehensive sense. A critical consideration will show that it is of *two kinds*, that is to say when the ambiguity and the doubt regarding the meaning and effect of a word or a sentence are removed (1) by the suggestive power of some particular word or words in the sentence itself or (2) by some other passage which bears upon it. Apadeva also says: "Linga is of two kinds—that which depends on some extrinsic evidence having a relation with the passage in question and that which is independent of such extrinsic help." **तच्च लिङ्गं द्विविधं सामान्यसम्बन्धबोधकप्रमाणान्तरापेक्षं तदनपेक्षञ्च** । (*o*). This fact is illustrated by him in the text "*Barhi devasadanam dami.*"

(I cut the grass for making a seat for the gods) the suggestive power which points to the word "dami" being used in the sense of cutting proceeds from a Prakarana of the Darsapaurnamasi Yaga **अतोऽवश्यं प्रकरणादिं सामान्यसम्बन्धबोधकं स्वीकार्य्यं** (*o*). Sree Bhatta Sankara also in his learned treatise, 'Mimansa Balaprakash' explains the dual character of Linga, and says that where the suggestive power of the words of a sentence explains the meaning, Linga is aided by Ekavakyata, *i. e.*, the Vakya principle is sought in aid.

In Slokavartika written by Kumarila Bhatta the word 'Linga' has been used to denote the matter which suggests the meaning, while 'Lingi' to signify that of which the meaning is suggested. He has explained in detail that Linga must not be an imaginary thing but some fact which is directly perceived. "Where one to whom a consciousness of the suggested meaning of words arises from the suggestive power of some other matter of which one is conscious by direct perception, for such a one there is nothing more to be desired." **प्रत्यक्षाऽवगताल्लिङ्गाद्यस्य लिङ्गिनि निर्भवेत् तस्य नातोऽधिकं किंचित्प्रार्थनीयं प्रसज्यते** [Slokavartika, Anumanana Chapter, Sloka 169].

Even in a case where the consciousness of the suggested meaning of certain matter is due to the suggestive power of a matter which is

(o) Mimanasa Nayaya Prakash, Jibananda Edition p. 19.

inferred, the inference of the existence of the suggestive matter must be based on facts directly perceived."

यत्राप्यनुमिताल्लिङ्गाल्लिङ्गिनि ग्रहणं भवेत् ।
तत्रापि मौलिकं लिङ्गं प्रत्यक्षादवगम्यते ॥ [Ibid 170].

Illustration of Linga Principle by Barhi maxim.

Barhi Nyaya (grass maxim, बर्हिन्याय : well illustrates the Linga principle by the following text : बर्हि देवसदनं दाम । "Oh grass! I do somethimg (dami) for making a seat for the gods." The first doubt regarding the meaning and force of this text is whether it is merely the direct report of an address made by a votary or it is an applicatory injunction enjoining a duty. This doubt is cleared by the Mantra-Linga which lays down that although a mantra (hymn) is a vocative declaration, it has a suggestive power which goes to show that its purpose is to lay down an applicatory Vidhi. This proposition has been laid down by Jaimini in Sutta 1, Ch. ii, Bk. III.

अर्थाभिधानसामर्थ्यान्मन्त्रेषु शेषभावः स्यात्तस्मादुत्पत्तिसम्बन्धोऽर्थेन नित्यसंयोगात् ।

In this case, cutting the grass for making seats for gods, is a prakarana of the Darshapauranmasi Yajna, and this is indicated by the suggestive power of the texts relating to that Yajna.

The next important question is, what is the duty enjoined by it ? *i. e.*, what is the meaning of the word '*dami*' ? It is,—to prepare a seat for the gods. In order to know the precise character of the act it is essential to know the exact meaning of the word '*dami*', which can be done by ascertaining the meaning of *Barhi*, as it is to Barhi that the address is directed. The meaning of the word '*Barhi*' will serve as the Linga to the meaning of the word 'dami' and the force of the whole text will become apparent.

Barhi has two meanings (1) *Kusa* grass (2) *Ulpa* grass. If its first meaning be accepted, then 'dami' will mean 'I cut' and the meaning of the whole sentence will be 'I cut Kusa grass to make a seat for the gods.' If Ulapa grass be taken as the meaning of *Barhi*, the sentence will have another meaning. Therefore *Barhi* must be taken to mean Kusa grass in the primary sense, the other meaning being only secondary or figurative. So the text would mean—'I cut Kusa grass to make a seat for the gods.' The mantra, therefore, imposed the duty of cutting Kusa grass तेनाङ्गत्वं यथा बर्हिर्देवसदनं दामीत्यस्य लवनाङ्गत्वं सहि लवनप्रकाशयितुम् समर्थः [Mimansa Nyaya Prakasha p. 19]. If *Ulapa* grass would have been understood by *Barhi* then probably *dami* would not have meant

'I cut'. Laugakshi Bhashkara in his Artha Saugraha (p. 69) concludes the maxim thus, "By this the force of the Mantra is shown to be that Kusa is to be cut and not *Ulapa*. By the Linga thereof (*i. e.* of *Barhi* it has the suggestive power of showing that it is to be cut." तेन वर्हिर्देव सदनं दामीति मन्त्रस्य कुशलवनाङ्गत्वं नतु उलपादि लवनाङ्गत्वं तस्य वर्हिर्दामीति लिङ्गात् तल्लवनं प्रकाशयितुम्समर्थात् । From the last sentence it is clear that the suggestive power of the word is to clear up the meaning of the word 'dami' to be 'I cut.' But the first sentence is not clear on the point. In another passage Laugakshi takes a narrow view of the scope of Linga and says: "Suggestive power is like the conventional sense of words, it being different from an etymological sense, the sense of compound words (deriving their meaning from the component parts) being different from Linga words which are based on conventional meaning."

सामर्थ्यं रुढिरेव तेन समाख्यातो भेदः ।

यौगिक शब्द समाख्यातो रुढ्यात्मक लिङ्गशब्दस्य भिन्नत्वात् ॥

Pranabhrit maxim.

The Linga principle of construction not only implies the suggestive power of words but also the suggestive power of ideas or rather of association of ideas. The Pranabhrit Adhikarana प्राणभृदादिशब्दानां स्तुत्यर्थताधिकरणम् [Jaimini I. iv. 17] which is based on Sutra 28, Ch. IV, Bk. I, illustrates the Linga of the latter class and shows how words acquire a purely conventional meaning by the Linga process. In Taittiriya Samhita [p. 5. 3. 1. 2] there is a passage: "He disposes the Pranabhrit." प्राणभृत उपदधाति । Again in the same Samhita [5. 7. 2. 5] there is a similar passage: "He disposes the Ajyani." आज्यानीरेता उपदधाति ॥ Now what is the meaning of Pranabhrit in the one case and of Ajyani in the other? The words 'Pranabhrit' and 'Ajyani' are respectively the names of two Mantras or verses which begin with those words. These verses are used in consecrating bricks required for certain purposes. From this fact the bricks consecrated by the Pranabhrit Mantra acquired the name of Pranabhrit. Similarly the bricks consecrated by the Ajyani Mantra acquired the name of Ajyani. But in course of time the whole heap of bricks of a particular kind came to be called Pranabhrit because one or two bricks of that heap were consecrated as Pranabhrit bricks. Thus the instance of Pranabhrit becomes a maxim for extending the scope of a name in the above manner. And the instance of the Pranabhrit and that of Ajyani being similar, the one supports the other. In fact, the meaning

of the words *Pranabhrit* and *Ajyani* in these cases is determined by the peculiar association of the words and by the context of the passages in which they are used. Such a use is therefore called *Lingasamabaya* (embodiment of the Linga) (*a*).

Other equivalent terms.

Lakshana Artha is often used instead of Linga, which Jaimini himself identifies with Linga. Jimutavahana in section 3, Chapter IV in constiuing a text of Yajnavalkya in the light of the suggestive power of another text of Manu and also in paras 17 and 18, section 2, chapter IV where he discusses whether interpretation by the suggestive principle is applicable to the case which he was considering in those sections, used the word Lakshana Artha in the same sense as the Linga.

Difference between Linga and Artha.

Jaimini treats Linga as the index of a passage found in another passage while 'artha' conveys more or less its ordinary meaning or purpose. His Sutra [I. vii. 2] यस्य लिङ्गमर्थम योगाद्‌भिधानवत्‌ "the Linga of a passage (found in another passage) being joined with its purpose becomes a gloss on it" clearly expresses that its *indicia* or suggestive power as found in another passage coupled with its own purpose becomes, as it were, a gloss on itself.

Sruti and Linga.

The difference between Sruti and Linga is well illustrated by the text *Aindra Garhapatyam Upatishthate*. *Garhapatya* means the sacred fire or household sacred fire and *upatishthate* means establishing fire. This is the Sruti meaning of the expression. But *Garhapatya* may mean Indra thus. The Mantra, "*kadachana starirasi nendrasaschasi dashuste*. (Thou Indra ever preserve and not destroy us) indicates *Indra* to be household deity. By the suggestive power of the Mantra "*Kadachan starirasi, etc*, *Garhapatya* in the text means Indra. In this case *Aindra Garhapatyam Upatishthate* is the Lingi, the matter, the meaning of which is suggested and the Mantra *Na staqirasi etc.* is the Linga.

Digest writers regarding Linga.

In Dattaka Mimansa Nanda Pandit referring to Pranabhrit maxim shows that though the word 'substitute' was first applied expressly to five descriptions of sons only, the word is applied to all the twelve descriptions by general use. Other digest writers also have often been driven to the necessity of forming constructive rules on some of the most essential points of the law of succession and inheritance, as the old law-givers had omitted to lay down any express rule on such points, as when the right of proprietorship vests in a son or sons in property belonging to the family. In the text, "After the (death of the) father

(*a*) K. L. Sarkar's Mimansa Rules of Interpretation p. 133.

and mother, the brethren being assembled, must divide equally the paternal estate: for they have no power over it, while their parents live," Manu's assertion about the proprietary right of the father during his life-time, is an indirect proposition. Its literal construction will not determine the question, specially in face of the texts of Yajnavalkya and other similar texts to the effect that neither the father nor the grandfather is master of the whole immovable estate. But these texts are also not clear on the point. So Vijnaneswara and Jimutavahana had recourse to various rules of construction to determine these points and this process involves what Jaimini called Linga, Vakya and Prakarana, though each process led to different conclusions.

Eternity of the Vedas by Linga principle.

There is no direct proposition as to the eternity of the Vedas themselves, but by the Linga principle of construction it has been so held by Jaimini. There is the following text in Rik Sambita V. 76. 5: "Oh Virupa by speech which is eternal!" Jaimini [Sutra 23. Ch. I. Bk. i] establishes principle for the eternity of the Vedas by the Linga principle, for the eternity of speech being assumed in the above text, a proposition asserting it can positively be construed.

III. THE VAKYA PRINCIPLE

Vakya is the process by which syntactical connection between one word and another, and between one clause and another is fully determined where such connection is not clear on the face of it. It is not used in its usual sense of a proposition or sentence.

Jaimini [III, iii, 44] defines Vakya thus: "The unity of idea constitutes the unity of a Vakya; if it be divided, then one part becomes as if pressing for another." अर्थैकत्वादेकं वाक्यं साकाङ्क्षं चेद्विभागेस्यात्।
He explains that Vakyas become different, when one co-ordinate proposition begins and another ends. "In the case of co-ordinates, there is division of a Vakya (proposition)." Laugakashi Bhashkara defines Vakya to be *Samavibyahara* समभिव्याहारो वाक्यम्। (putting together) and says: "It means the connected enunciation of two words denoting two things which, in reality, stand to each other in the relation of principal and subsidiary, although this is not indicated by second case affixes, *etc*, directly indicating the one of the two things to be the thing to be accomplished by the other *etc.*, (which relations are directly indicated by Vibhakti-sruti *etc.*)"

समभिव्याहारश्च साध्यत्वादिवाचकद्वितीयाद्यभावेऽपि वस्तुतः शेषशेषिवाचकपदयोः सहोच्चारणम्।

The passage though a bit obscure, shows that the real gist of the Vakya principle is to find out a grammatical relation which is not clear

on the face of it. But where the grammatical relation between sentences is explicit and the meaning of the words clear, it would be called literal construction.

In the Adhikarana called *Sandigdharthaniupanadhikaranam* सन्दिग्धार्थनिरुपणाधिकरणम् Jaimini [I. iv. 18. Adhi] lays down, "In cases of doubt, the solution is by reading into the passage what forms the sequence of it." सन्दिग्धेषु वाक्यशेषात् [I. iv. 29]. There is the text, "He places besmeared pebbles of sandstone." शर्करा अक्ता उपदध्यात् Then follow the words, "*Ghee* is indeed light." तेजो घृतं [Taittitriya Samhita 3, 12, 5, 12].

In the above passage one does not know what is the meaning of besmeared pebbles. With what are the pebbles to be besmeared? This difficulty is removed by the succeeding clause which speaks of *Ghee*. So it must be understood that the pebbles are besmeared with *Ghee*. Here you will observe that in order to make the meaning of the passage clear, it is not only necessary to utilise the term *Ghrita* in connection with the term *akta* अक्ता (besmeared or anointed), but also to supply the word *ghritena* (by ghee) घृतेन before the word *akta* अक्ता। It often happens that the Vakya principle involves the introduction of some variation in the structure of the sentence. The following will serve as an illustration of the point. "He, whose sacrificial ladle is made of *Parna* wood hears no evil sound" यस्य पर्णमयी जुहुर्भवति न स पापं श्लोकं शृणोति। Laughakshi Bhaskara makes the Vakya principle bear upon this text in the following manner (Dr. Thibaut's translation):

"The passage 'he whose sacrificial ladle is made of *parna* wood hears no evil sound.' Here we see from the manner in which the words parna wood and ladle are joined, that the ladle should be made of *parna* wood. Nor is it to be said that the circumstance of being made of parna wood is purposeless as the ladle could be made also in a different way (*i e.*, from some other kind of wood). For the word ladle intimates at the same time the peculiar transcendental result to be accomplished by it (by a ladle made of *parna* wood). So that the sense of the passage is "By its being made of *parna* wood he is to realize the peculiar transcendental result connected with the ladle, by means of carrying in it the oblation, after it has been taken out of the vessel (by *avadana*). As it thus appears that if the ladle is made of parna wood, then the transcendental result to be brought about by it ensues and not in any other case, the circumstance of its consisting of *parna* wood is not purposeless. The phrase "by means of carrying in it the oblation after it has been taken out of the vessel by *avadana*" (*i. e.*, the

last phrase of this clause) is necessarily to be used as otherwise the quality of being made of *parna* wood might be extended to Sruva, Sruk *etc.* also. . . ."

यथा यस्य पर्णमयी जुहुर्भवति न स पापं श्लोकं शृणोतीत्यत्र पर्णताजुह्वोः समभिव्याहारादेव पर्णताया जुह्वङ्गत्वम्। न चानर्थक्यम्, अन्यथापि जुह्वाः सिद्धत्वादिति वाच्यम्। जुहु शब्देन तत् साध्यापूर्वलक्षणात्। तथा च वाक्यार्थः। पर्णतयाऽवत्त ह विर्धारणद्वारा जुह्वपूर्वं भावयेदिति। एवं च पर्णतया यदि जुहु. क्रियते तदेव तत्साध्यमपूर्वं भवति नान्यथेति गम्यत इति न पर्णतस्रु या वैयर्थ्यम्। अवत्त हवि र्धारणद्वारेति चावश्यं वक्तव्यम्। अन्यथा स्रुवादिष्वपि पर्णतापत्तेः। Laugakshi Bhashkara, p. 7.

In short, Laugakshi Bhashkara says, though somewhat obscurely, that the clause "he whose ladle is made of *parna* wood hears no evil sound" should not be read as it stands, but that it should be read as if certain other words which occur later on formed part and parcel of it.

The application of the Vakya principle gives the text quite a different reading from the original text and the variation becomes unavoidable to make it useful. Thus the proposed reading makes it an applicatory Vidhi with the proper sanction attached to it. The change is brought about to give effect to the axiom of avoiding meaninglessness to a text.

Aruni maxim well illustrates this principle of construction. That text is, *Arunaya pingakshaikahayanya somam krinati* [Taittiriya Samhita 6. 1. 6. 7]

"Buy *Soma* by means of the red-coloured, pink-eyed and one year old." Three adjectives are found in the above without a noun which they qualify. What is that thing which must be red coloured, pink-eyed and one year old with which the *soma* is to be bought? It is a calf. For in the description of *Soma Yagya* where the text occurs a mention of a calf has been made. So calf is to be put after the adjectives to make the sentence clear. Savara Bhashya (p. 310) admits this construction to be Vakya **वाक्यम् अरुणया क्रीणाति इति।**

Modern writers generally use Anvaya (syntactical connection) for Vakya. In Anvaya small particles such as cha **च** which means that the words connected by it have to be taken as connected incidentally or collectively or severally or in a cumulative sense, are of great value. Vakya includes the use of Adhyahara and of Anusanga (the supplying of ellipses in some form or other), as well as of *Upakarsha* and *Apakarsha* (transference of clauses up and down). The supplying of ellipses of

Vakya includes Adhyahara, Anusanga etc.

connecting links between two sentences is of frequent occurrence in the process of the Vakya principle. The importation of words from outside is not proper where an ellipsis can be supplied by reading into the passage words that occur in the passage itself. This rule is also consistent with the Anusanga maxim which is to the effect that, "where there is a number of incomplete clauses followed by one which is completed by a finite verbal clause, this last should be read at the end of each of the other clauses to make them complete." [अनुसङ्ग न्यायः Jaimini II ii. 16. Adhi]

In the well known *factum valet* controversy Jimutavahana resorts to Adhyahara (insertion and variation of words) and cites the following texts :—

"A single parcener may not without consent of the rest, make a sale or gift of the whole immovable estate nor of what is common to the family."

स्थावरस्य समस्तस्य गोत्रसाधारणस्य च ।
नैकः कुर्य्यात् क्रयं दानं परस्परमतं विना ॥ [Vyasa.]

"Separated kinsmen, as those who are unseparated are equal in respect of immovables: for one has not power over the whole to give, mortgage or sell it.

विभक्ता अविभक्ता वा सपिण्डाः स्थावरे समाः ।
एको ह्यनीशः सर्व्वत्र दानाधमन विक्रये । [Vyasa.]

"Though immovables or bipeds have been acquired by a man himself, no gift or sale of them can be made unless conversing all the sons."

स्थावरं द्विपदञ्चैव यद्यपि स्वयमर्ज्जितं ।
असम्भूय सुतान् सर्व्वान् न दानं न च विक्रयः ॥

Out of these texts the last one is defective which says "no gift or sale of such and such property." So a verb should be supplied either conveying the sense of 'must be made' or 'should be made. Jimutavahana is in favour of the latter clause.

The Mimansakas do not clearly suggest a deviation of the ordinary grammatical rule, but point out the necessity of combining words and clauses in an order different from that in which they present themselves, so justifying an alteration of the actual syntactical connection. Maxwell [3rd Ed. pp. 26-27] also suggests the necessity of making in some cases a deviation from the ordinary grammatical rules as is evident from the following passage:

"But it is another elementary rule that a thing which is within the letter of a statute is not within the statute unless it be also within the

real intention of the Legislature, and the words, if sufficiently flexible, must be construed in the sense which, *if less correct grammatically is more in harmony with that intention.*"

IV. THE PRINCIPLE OF PRAKARANA

When a subject is divided into parts or topics which are again subdivided into subordinate parts and this subdivision is continued till sections or paragraphs are arrived at, such sections or paras are generally termed Prakaranas. But in legal phraseology 'the divine law as laid down in the Vedas' denotes the details of a transaction which has been enjoined or subordinate rules relating to the carrying out of its details. Accordingly Jaimini [in Sutra II, Ch. III, Bk. III] defines Prakarana thus: "(Where the principal Vidhi is) disjoint, the purpose of the details (*itikartabyata*) is settled from the Prakarana," **असंयुक्तं प्रकरणादितिकर्त्तव्यतार्थित्वात् ॥** The principle has been explained by Laugakshi Bhashkara as "*Ubhayakauksha*" (interdependence) **उभयाकाङ्क्षा प्रकरणम्** and has been defined and illustrated as follows: "An example is afforded by the following passage connected with the *prayajas*, 'he is to offer the *samidh*.' As in this passage no special fruit (of the offering) is mentioned, the sense merely being 'he is to realize by means of offering the *samidh*,' there arises the question 'what (is he to realize)?' originating in the want of something to which the offering of the *samidh* might contribute. And again after the passage about the Darsapaurnamasa sacrifice it has given rise to the idea 'he is to realize paradise by means of the Darsapaurnamasa' there arises the question 'how is he to realize paradise?' originating in the want of something which may contribute towards bringing about the desired result. Thus by mutual interdependence the subsidiary relation in which the *prayajas* stand to the Darsapaurnamasa is established."

यथा प्रयाजादिषु समिधा यजतीत्यादौ वाक्ये फलविशेषस्यानिर्देशात् समिधागेन भावयेदिति बोधनान्तरं किमिति उपकार्य्याकाङ्क्षा। दशपूर्णमास वाक्येऽपि दशपूर्णमासाभ्यां स्वर्गं भावयेदिति बोधानन्तरं कथमित्युपकारकाकांक्षा इत्थं चोभयाकाङ्क्षया प्रयाजादीनां दशपूर्णमासाङ्गत्वम्। (Laugakshi Bhashkara p. 8).

From the above example it is clear that the text 'he is to offer the *samidh*' is an incomplete proposition as it does not express in what connection the offering is to be made, or for what purpose. The same is the case with the text that one is to realize paradise by means of the Darsapaurnamasi. It simply declares the purpose and object of performing the Darsapaurnamasi, but it does not show what offerings are to be made in performing it.

The Sruti construction of the two passages cannot help us in any way and the Linga principle is also of no avail. For the first passage '*Samidha yajeta*' has in it no suggestive power to suggest any thing specific to develop the sense of the other passage '*Swargakama Darsapaurnamasabhyam yajeta*' and *vice versa*. The Vakya principle is also not applicable to this case as there cannot be any grammatical construction between passages which are not close to each other. When these three principles of construction fail, a new principle has to be taken recourse to. This principle is in fact the principle of interpretation by the logic of the subject. It is based on the latent relation of ideas which, looking to the nature of subject, must have been present in the mind of the author. In this case there is no human author as our law is divine. This principle is therefore removed from the literal principle further than either of the preceding two *viz.*, Linga and Vakya.

There are some restrictions as regards the application of this principle of construction. Where a clause is regarded as Prakarana, it should not be placed *higher* than the Vidhi, so as to make it a Vidhi specially where such a Vidhi would be useless. Accordingly Jaimini has laid down in Sutra 24, Ch. II, Bk. I: "Where Prakarana is possible, something higher must not be supposed when it would bring into existence an useless Vidhi." **प्रकरणे सम्भवन् अपकर्षो न कल्प्येत, विध्यानर्थक्यं हि तं प्रति ॥**

This Sutra has been made to bear on a text of Taittiriya Samhita [1. 6. 3. 4] which is to the following effect: "If you leave such and such act unperformed, you will please the lowest spirits; if you half perform it, you will please the middle spirits; if you fully perform it, you will please the gods; the sacrificer who has left the work half done should do it thoroughly to please the gods." **यो विदग्धः, स नैर्ऋतः । योऽशृतः स रौद्रः । यः शृतः सः सदेवस्तस्माद्‌विदहता शृतङ्कृत्यः सदेवत्वाय ॥**

"The question raised is this: The last clause which is the operative clause speaks of doing the thing thoroughly so as to please the gods. But there is no operative clause of doing it by half so as to please the middle spirits who like the doing of it by half. Should not such an operative clause be presumed? The author says 'no,' because the clause for doing the thing by half to please the middle spirits is capable of being read as a Prakarana to the last clause. Its meaning would be quite satisfied by taking it as merely an introductory clause. So a Vidhi should not be presumed for performing a similar act by half, specially as the whole passage bears on the Paurnamasi Yagya, which has no Vidhi for any offering to the middle spirits." [K. L. Sarkar p. 151].

"In order to refer a passage which states a matter of detail or an incidental matter to some principal matter with which it may be connected, the interpreter must ascertain what the principal matter is. This he must do by a general study of the subject. Jaimini lays down in Sutra 1, Ch. I. Bk. VII :—

श्रुतिप्रमाणत्वच्छेषाणां मुख्यभेदं यथाधिकारं भावः स्यात् ॥ This principal sacrifice is Darsapaurnamasi and it is called the *Prakriti.* Subordinate sacrificial acts without any express purpose must be taken to be part of this principal sacrifice. The Darsapaurnamasi has no provisions as regards detail in its own place. So a want is created for the subordinate sacrificial acts which are stated elsewhere." [K. L. Sarkar p. 151].

Upalakshana (*incidental* indication) is another name for Prakarana.

Other equivalents.

These terms are practically equivalent though not exactly the same. The term Upalakshana is used to indicate a case where particular instance is taken to represent a general rule. For example, Jimutavahana while dealing with the question of the succession of a son to his father, says that it is a case of Upalakshana only, meant to represent the general principle. When the general principle is mentioned at one place and the particular instances at another, they are no doubt illustrations of the general principle, but their fit place would have been where the general principle was stated. So Upalakshana, though not exactly similar to Prakarana resembles it. In *Gurugobinda Shaha* v. *Anand Lal Ghosh,* 13 W. R.—, regarding the question of succession of persons related as one's paternal uncle's son, Mitter, J., pointed out that the Dayabhaga abounds in passages in which a particular instance is put down to represent a general principle. A particular instance is so to say a part of a general principle, just as an isolated act of sacrifice is taken to be a part of the standard sacrifice.

Prakarana and Guna Sruti distinguished.

A Prakarana forms a part and parcel of some one principal Vidhi or principal transaction. But a Guna Sruti is a general enunciation of some proposition, which is applicable to any Vidhi or transaction according to its requirements. In fact, it describes what are the characteristic features of a thing, without reference to any particular case [Jaimini III. i. 14] सर्वेषां वा लक्षणत्वादविशिष्टं हि लक्षणम् । In this respect Mitha Asambandha Nyaya (the principle of non-mutual connection) which is stated as follows may be considered :—"Descriptive clauses being directed to the main purpose are all co-ordinate and have therefore no connection with each other." [Jaimini III. ii. 22].

गुणानां च परार्थत्वादसम्बन्धः समत्वात् स्यात् ।

Along with these principles of construction two other principles are also mentioned which are particular cases of Prakarana and of Linga, also of a limited character.

Sthana principle.

देशसामान्यं स्थानं । 'Sthana' (position) means commonness of place. It signifies the relative position of one text with reference to another. Such relative position explains the order of sequence in which the texts must be taken to stand with reference to each other or in which the acts must follow each other. So 'Sthana' is practically similar to 'Krama' (the order of succession). Laugakshi Bhashkara holds that 'Sthana' has the same meaning as 'Krama' स्थानंक्रमश्चेत्यर्थान्तरम् ।

The relation arising from position is often useful in settling the meaning and effect of texts which are thus related by position. The question of Krama (order) is of grave importance in Vedic ceremonies. The rules of Krama may also be turned to account in settling the relative position in some cases of heirs whose position is not determined by texts. For example, in the case of succession of the sons of daughters of agnate relations, when such an heir presents two oblations only to one of the ancestors, a difficulty has been felt whether he is to be placed after or before an agnate relation who offers only one oblation to such ancestor. In such cases, the considerations which Jaimini introduces in the rules of Krama laid down in Book V of his work, may be of considerable help. But a resort to these rules has never been tried in such a case [K. L. Sarkar p. 154].

Another principle is Samakhya (name) which is an inferior kind of Prakarana. It means and signifies a connection established between different passages by the indication given by a derivative word or a compound name. For instance the word *Dayada* (person on whom heritage devolves) occurring in a text would connect that text with the subject of *Daya* (partition).

Samakhya principle.

SECTION 3. THEIR RELATIVE FORCE AS TO APPLICATION

It is essential to consider the relative force of these four principles of construction. Before doing that the following passage of Maxwell may be perused with advantage : "The literal construction then, has, in general, but *prima facie* preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope, and object of the whole Act; to consider, according to Lord Coke, (1) what was the law before the Act was passed, (2) what was the mischief or defect for which the law had not provided, (3) what remedy Parliament has appointed, and (4) the reason of the remedy.

According to another authority, the true meaning is to be found not merely from the words of the Act, but from the cause and necessity of its being made, which are to be ascertained not only from a comparison of its several parts, but also from extraneous circumstances. The true meaning of any passage, it is said, is to be found out not merely in the words of that passage, but in comparing it with every other part of the law, ascertaining also what were the circumstances with reference to which the words were used, and the object appearing from those circumstances, which the Legislature had in view."

There is a suggestion of a variety of rules and principles covered by the general expression 'construction by context' in the above passage, but no attempt has been made to separate the province of literal construction from that of a contextual one. But in our Mimansa system, literal or Sruti principle of construction has been clearly set apart from other principles of construction, such as, Linga, Vakya and Prakarana, and Sruti has an admitted superiority and preference over the others. The rules of interpretation have been reduced to a scientific form, a proper classification has been made, which far excels any other system of interpretation.

Linga and Vakya distinguished.

Sruti principle of construction stands obviously distinguished from Linga, Vakya, and Prakarana. Prakarana is also clearly distinguishable from the rest, but the difference between Linga and Vakya which are both principles of construction by context, is not so clear and obvious. K. L. Sarkar (p. 157) has very nicely explained the distinction in these words: "But according to the Mimansakas, the term Linga is applicable only to cases in which the context clears up the obscurity and vagueness of the meaning of words and of clauses. And the term Vakya is applied where the context removes the obscurity and vagueness of the connection between one word and another, or between one clause and another. In Linga the limits of a proposition are illustrated or illumined by extrinsic light; in Vakya the limits are enlarged or contracted by additions or subtractions. Thus, although both Linga and Vakya are cases of interpretation by context, they are distinguishable from each other. Linga is said to be the suggestive power of words and clauses. It may be said that Vakya also in one sense involves the suggestive power of words and clauses. But there is this difference between the two, according to the Mimansakas. They take care to point out that the Linga is the suggestive power of words and clauses to show the meaning and intention of any particular word or clause. Kumarila Bhatta elaborately explains this. In cases of Vakya, no doubt the suggestive power of

words and clauses comes into play, but it is not to show the meaning of any particular word or clause, but to indicate how one word or one clause is to be read with another word or another clause."

"The above distinction is not fanciful, nor useless. For there are cases in which it is only necessary to consider the meaning and intention of any particular word or clause. And there are others in which there is no necessity to consider the question of the meaning of any word or clause, but in which the only necessity is to consider how a particular word or a particular clause should be read with some other clause as a matter of syntax. So it is proper that the interpreter should not make confusion between the two cases."

"The Mimansa writers do not lose sight of the fact that practically both the Linga and Vakya principles, and for the matter of that also the Prakarana principle, are often applied together as supplementary to each other in interpreting one and the same passage. In such a case the different principles co-operate towards the same end, and there is no conflict between them. Consequently in such a case the question of their relative force or relative value does not arise. When, however, there is a combination of the operation of two or more principles, as stated above, the Mimansa writers designate the case as belonging to that principle of construction which has the predominating part, ignoring those that play a subordinate part."

विध्युक्तिविनियोगा हि न विना शब्दशक्तिभिः । न चेन्द्रशब्दसामर्थ्यमभिधाश्रुतिवर्जितम् ॥ सत्यमुभयत्रोभयमप्यस्ति । किन्त्वैन्द्र्या गार्हपत्यस्य नोक्तिशक्त्यावगम्यते । इन्द्राङ्गत्वमतिश्चास्या नान्तरश्रुतिकारिता ॥ [Tantra Vartika p. 839.]

वाक्यं ह्येतत् ऐन्द्र्या गार्हपत्यमुपतिष्ठते । नैतदेवम् यद्यप्येतत् वाक्यं श्रुतिरप्यंत्रास्ति । या त्वत्र श्रुतिः सा लिङ्गेन विरुध्यते न यत् वाक्यम् ।

[Savara Bhashya p. 314]

Sruti distinguished from other principles.

Sruti is clearly distinguishable from Linga and Vakya, as in a Sruti there is no ambiguity of meaning nor any vagueness of connection raising doubts as to which word should be read with which word. Sruti is, as has already been observed, a literal principle of construction and is independent, so it is easily distinguishable from Prakarana which is dependent. The difference between a Vakya and a Prakarana is that in a Vakya words or phrases are to be read together as a matter of syntax, while in a Prakarana propositions are to be read together as a matter of the logic of the subject. When the interpretation of a subject-matter is made under the combined operation of all, the case goes by the name of that principle which plays the chief part, Some illustrations are given below :—

"In the Garhapatya maxim गार्हपत्यन्यायः [Jaimini III, ii, 2. Adhi] the leading part of the sentence Garhapatyam Upatishthate गार्हपत्यम् उपतिष्ठते । being Sruti *i.e.*, being unambiguous the whole sentence is taken as a Sruti, because by virtue of the leading words the whole sentence becomes clear in meaning. Here the Vakya principle comes in as a subordinate matter यद्यप्येतत् वाक्यं श्रुतिरप्यत्रास्ति, या त्वत्र श्रुतिः सा लिङ्गेन विरुध्यते ।"

"In the Barhi maxim बर्हिर्न्यायः the meaning of the leading words 'Dami दामि and Barhi बर्हि of the sentence being settled by Linga, the whole sentence is regarded as a case of Linga, although the Vakya principle has a subordinate part in it. In the Parna-wood maxim, the leading idea is not expressly mentioned, but it is implied by reading one clause with another by the principle of Vakya. But tacitly the principle of Prakarana joins in making the implication." [p 160.]

Their relative positions.

There may occur cases in which by applying different principles opposite results may ensue. In such cases one principle cannot be so applied as to override another [Savara Bhashya III. iii. 14] बलीयानपि हेतुर्विरुध्यमानम् अबलीयांसं बाधितुमर्हति नाविरुद्धम् । Jaimini [III. iii. 7] has clearly laid down the Adhikarana which is called "*Srutyadinam purva purva Valiyatwadhikarana* " (the topic of the superior force of Sruti, Linga *etc*, in the ascending scale). Sutra 14 of the said chapter of the same book runs thus: "Where Sruti, Linga, Vakya *etc*, are applicable (but tending to different results), one is superior to the other in the order of the enumeration, because the significance of each that follows is remoter and more far-fetched." श्रुतिलिङ्गवाक्यप्रकरणस्थानसमाख्यानां समवाये पारदौर्बल्यमर्थविप्रकर्षात् । It has already been explained from Garhapatya maxim that where Sruti and Linga principles are both applicable but with divergent tendencies, that of the Sruti prevails. Other cases of Linga and Vakya are discussed in this text: "I make a pleasant seat for thee, I make it very lovely with a stream of Ghee; on this, the immortal one sit down, repose on it, propitiously-minded, O marrow of the rice-grains."

K. L. Sarkar (p. 161) has explained the above text thus:

"Now this passage is not a combination of two co-ordinate Vakyas, the one containing the idea of making a seat, and the other the idea of an invitation to the rice-deity to sit on it. But it is one Vakya in which, of the two ideas, one must be the principal and the other ancillary. The question is which of the two ideas is the principal, the making of the seat or the request to the rice-deity to sit on it. If you read it simply as a Vakya, then the leading idea would seem to be

asking the divinity (the marrow of the rice-grains) to sit down on the pleasant seat, which the devotee is preparing and making lovely for him. To give effect to this idea, the second clause should be placed first, as it contains the leading idea, thus giving the first a subordinate position, which according to the grammatical connection apparently it deserves. This is the effect of construing the passage by the Vakya principle. *Now apply the Linga principle to it.* When the Rishi says, 'I make a pleasant seat for thee, O divinity in the marrow of the rice-grains,' it implies by the suggestive force of the words that such a pleasant seat should be made. In other words, it implies a Vidhi for making such a pleasant seat. This suggestive power of the words is strengthened by parallel cases, such as, "*Barhi Devasadanam Dami.*" बर्हिर्देवसदनं दामि। Thus by applying the Linga principle, the first half of the sentence becomes the leading element of the whole sentence and becomes an applicatory Vidhi, subsidiary to the Darsapaurnamasi Yaga. The two results being different, which is to prevail? The answer is,—Linga. "For, if you accept the Vakya principle, you must also apply the Linga principle to make an applicatory Vidhi out of the passage, so as to convert the second clause to an applicatory Vidhi to the effect that the rice-deity must be asked to sit down. But by the direct application of the Linga principle we have an applicatory Vidhi without transposing the parts. Therefore, we should not resort to the Vakya principle in this case."

Superiority of Vakya over Prakarana.

The principle as to the superiority of Vakya over Prakarana can be illustrated by means of the text: "O Indragni! You accepted this offering *etc.*" इन्द्राग्नि इदं हविरित्यादि [Laugakshi Bhashkara] in the words of K. L. Sarkar (p. 163): "This text is collateral to the text relating to the Darsa sacrifice and should be read together as forming one Vakya. But it forms a Suktavaka, and, as such, can be connected by Prakarana with the Darsapaurnamasi sacrifice. In other words, by Prakarana, this Suktavaka is to be used both at the Darsa sacrifice as well as at the Paurnamasi sacrifice. But reading Suktavaka as a text collateral to the Mantra and addressed to Indragni, who is only invoked at the Darsa sacrifice, the Suktavaka should be used only at the Darsa sacrifice. In other words, by the Vakya principle, the Suktavaka would relate only to the Darsa sacrifice, the divinity Indragni not being found in the Vidhis regarding the Paurnamasi sacrifice. Thus the two principles would tend to different results. According to the Adhikarana, the Vakya principle should prevail and the Suktavaka should be only used at the Darsa sacrifice and should not be taken as a Prakarana to the Darsa paurnamasi sacrifice. The reason assigned by the Mimansakas

with reference to this case is rather technical. But to common sense, the reason is simple. The construction by Vakya is comparatively nearer to the literal construction than construction with reference to presumptions made on the basis of logical considerations."

The effect of the maxim regarding the relative force of Sruti, Linga, Vakya and Prakarana in the order mentioned may be summarised thus in the words of K. L. Sarkar (p. 164) "When both the substance and form of an expression is clear (Sruti-like), it requires no construction Failing that, the construction should be rather with reference to the substance (Linga) of the expression than its form (Vakya) And as a Vakya represents an integral idea, an expression should be presumed rather to be a Vakya than a Prakarana, which means a fragmentary idea."

The Adhikarana regarding the relative superiority of these principles of interpretation would be more clear if illustrations be taken from our recent digest writers :—

ऊर्ध्वं पितुश्च मातुश्च समेत्य भ्रातरः समम् ।
भजेरन् पैतृकं रिक्थमनीशास्ते हि जीवतोः ॥ [Manu IX, 104].

"After the (death of the) father and the mother the brethren being assembled must divide equally the paternal estate; for they have not power over it, while their parents live."

Jimutavahana interprets this text on similar lines as Jaimini did with regard to "Aindra Garhapatyam Upateshthate", a text of the Sruti principle. *Garhapatya Upatishthate* being the gist of the whole text and being clear or expressive of itself, the word 'Aindra' with its suggestive power (Linga) is not allowed to interfere with the clear meaning of the word *Garhapatya.* Similarly Jimutavahana takes the expression 'Anishaste hi jibato' अनीशास्ते हि जीवतोः as the essence of the text, and says that when the meaning of these words is clear, showing that the sons have no right during the life-time of their parents, the first part of the sentence, which might suggest the idea of laying down a rule as regards the time of partitioning property, which had vested in the son before the death of the father, cannot be taken in this sense so as to override the clear meaning of the essential words '*Anishaste etc.*' Colebrooke translates the statement on this point in para 29 Ch. I as follows: "Therefore the text of Manu must be argued (by you) to intend the prohibiting of partition, although the son's right subsists during the life of the father. But that is not maintainable. For it would thus bear an import not its own." अतो जीवति पितरि सत्यपि पुत्राणां स्वाम्ये निषेधार्थं मनुवचनं वाच्यं तच्चानन्योन्य स्वार्थपरतापत्तेः । In fact, the first clause, at best, can only suggest

that the right vested before the death of the father by way of Linga. But as the concluding portion clearly shows that the right had not so vested it should prevail in the way of Sruti. [K. L Sarkar p. 165]

Jimutavahana's discussion on the following text of Yajnavalkya will further illustrate the superiority of Linga to Vakya ;—

अप्रजास्त्रीधनं भर्तुर्ब्राह्मादिषु चतुर्ष्वपि ।

" The separate property of a childless woman married in the form denominated Brahma or in any of the four (unblamed form of marriage) goes to her husband."

This texts is not clear, but if the suggestive power of the corresponding text of Manu be utilized, it would be evident that the property which has been received by a woman at the time of her marriage in any of those forms, devolves on her husband, if she die without issue.

The text of Manu IX, 196 and 197 are given as under :

It is admitted, that the property of a woman married by the ceremonies called Brahma, Daiva, Arsha, Gandharva and Prajapatya shall go to her husband if she die without issue. But her wealth, given to her on her marriage. in the form called Asura or either of the other two forms (Rakshasa and Paisacha) is ordained on her death without issue, to become the property of her mother and of her father."

ब्राह्मदैवार्षगान्धर्वप्रजापत्येषु यद्धनं ।
अप्रजायामतीतायां भर्तुरेव तदिष्यते ॥
यत्त्वस्याः स्याद्धनं दत्तं विवाहेष्वासुरादिषु ।
अतीतायामप्रजायां मातापित्रोस्तदिष्यते ॥

The expression, "But her wealth given to her on her marriage *etc.*," of the above passage as given by Jimutavahana shows that the meaning of the first part of Manu's text as well as of Yajnavalkya's is that the property given to her at the Brahma and allied forms of marriage is the subject of the rule enunciated.

If we look to the syntactical arrangement of Yajnavalkya's text, the meaning would be that any property belonging to a woman married according to the above forms would go to her husband. In connection with the above, Jimutavahana applied the Linga principle in preference to Vakya though reasons have not been given.

The principles of construction, as given above, are called Viniyoga Pramanas by Laugakshi Bhashkara. 'Pramana' means principles of construction. A number of Pramanas (means of proof) have been mentioned in the Hindu system of philosophy. They are:

(1) Pratyaksha प्रत्यक्ष —Direct perception.

(2) Anumana अनुमान —Inference.

(3) Upamana उपमान —Analogy.

(4) Arthapatti अर्थापत्ति —Concomitancy of sense.

(5) Shabda शब्द —Communication.

(6) Shishtachara शिष्टाचार —Approved usage.

(7) Abhaba अभाव — Something like *reductio ad absurdum* method.

These Pramanas have little connection with the subject of construction except that Shabda Pramana is the basis of the Sruti principle, and that Anumana, Upamana and Arthapatti together are the basis of Linga, Vakya and Prakarana principles, while Shishtachara is the foundation of those principles of interpretation which have reference to usage and which are discussed by Jaimini in his chapter on the Smritis.

CHAPTER IV

MAXIMS OF INTERPRETATION

SECTION I. INTRODUCTION

The specific principles of Mimansa are termed Nyayas or maxims.

Mimansa Nyayas: (1) defined and explained.

Mimansa Nyaya or Adhikarana, which Colebrooke has translated as Maxim, is a specific rule or a settled point on some subject or the other. It may be said to correspond to the head-note of a decided case as found in modern Law Reports. There is no doubt that a Nyaya is arrived at in a manner quite different from the process by which statements of points decided by the judiciary in a law-suit are arrived at. A maxim of Roman Law is a judicial principle by judicial savants, but Nyayas are decided by a process of arguments pro and con, and form the conclusion thereof. In this respect they may be said to resemble the head-notes of modern case-law.

Professor Maxmuller has given the analysis of a Nyaya in these

(2) Analysed.

words: "In order to discuss a subject more fully and to arrive in the end at a definite point, the authors of the Sutras are encouraged to begin with stating first every possible objection that can reasonably be urged against what is their own opinion. As long as the objections are not perfectly absurd, they have a right to be stated and this is called the *Purvapaksha*, the first part. Then follow answers to all these objections and this is called the *Uttarapaksha*, the latter part; and then only are we led on to the final conclusion (the *Siddhanta*). This system is exhaustive and has many advantages, but it has also the disadvantage, as far as the reader is concerned, that without a commentary he often feels doubtful where the cons and the pros begin. The commentators themselves differ sometimes on that point. Sometimes again, instead of three, a case of *Adhikarana* is stated in five sub-divisions, *viz.*,

1. The subject to be explained विषय ।
2. The doubt विशय or संशय ।
3. The first side or *prima facie* view पूर्वपक्ष ।
4. The demonstrated conclusion सिद्धान्त or निर्णय ।
5. The connection (relevancy) संगति ।"

The *Mimansa Sutras* are grouped into Adhyayas, the Adhyayas into Padas, and the Padas into Adhikaranas or sections. A Mimansa Adhikarana consists of five sub-divisions as given above

विषयो विशयश्चैव पूर्वपक्षस्तथोत्तरम् ।
निर्णयश्चेति पञ्चाङ्गं शास्त्रेऽधिकरणं स्मृतम् ॥

It has already been explained that the general principles of interpretation of Mimansa—Sruti, Linga, Vakya and Prakarana, are similar to the modern general principle of interpretation called the literal principle, the principle of interpretation by context and the like. The Mimansa Nyayas which are particular cases of the principles of Sruti, Linga, Vakya *etc.*, could correspond to decided cases falling under one or other of the above-mentioned general heads. Therefore, a thorough knowledge of the general principles is very essential for the examination or study of the Nyayas.

Kumarila Bhatta, the leader of the Mimansa Literature, has laid down the doctrine as regards the two general principles, Sruti and Linga, that the *leading word or phrase in a text is to be found in the first instance*; the same principle has also been enforced by Savara Bhashya (Jibananda's Ed. p. 315) :

अथ वा नात्रैकवाक्यत्वात् इन्द्रप्राधान्यं गार्हपत्यप्राधान्यं वा उपस्थानस्य कुतस्तर्हि । इन्द्रशब्दत्वात् मन्त्रस्य इन्द्रप्राधान्यम् द्वितीयाविभक्तिश्रवणात् गार्हपत्यप्राधान्यम् तस्मात् श्रुतिलिङ्गयोर्विरोधः ।

If that word or phrase is clear in meaning, then the text is a Sruti and the pith of the subject-matter being clear, the rest of it will be clear by itself. For example, the words '*Garhapatyam* '*Upatishthate*' which are the burden of the text '*Aindrya*' *Garhapatyam Upatishthate* ऐन्द्र्या गार्हपत्यम् उपतिष्ठते being clear, the whole text becomes clear. But when the leading word or words of a text are not clear, as the word *Dami* in the text *Barhi Devasadanam Dami* बर्हिर्देवसदनं दामि । the ambiguity or uncertainty is to be removed by indications afforded by other words, either in the text itself or in other texts by the principle of Linga.

The next question of utmost importance that arises is, what are the "leading words"? Kishori Lal Sarkar in his treatise on the subject (p. 270) says: "Gaga Bhatta in his well-known work 'Bhatta Tarka-Pada,' and Khanda Deva in his equally valuable work 'Bhatta Rahasya,' explain how in some instances the word or words expressive of the tense and mood are the leading words, and in other instances the words denoting the case are the leading words. For instance, when

time or the manner of an action is the essence of a proposition, the words expressing the tense and mood are important. But when the essential point is, 'what is the object of an action', the accusative case is the leading thing; and when the essential point is 'by whom an action is to be done,' the instrumental case becomes prominent and so on. Thus the *whole key of Mimansa interpretation is, to find out the leading word or words of a text as distinguished from subordinate words.* If the meaning of such word or words is clear, it is a Sruti enjoining an action or defining a thing. If the leading words are traceable, but their meanings are uncertain, you have to find out the precise meaning."

Classification of Nyayas.

Nyayas may be classified according to the general principle and also with reference to the nature of the purpose they serve. According to the latter classification they may be divided into five kinds. Their classification and treatment as given by the learned author, Kishori Lal Sarkar, in his leading treatise, have been adopted in this work.

I Those that relate to the interpretation of words.

II. Those bearing on the construction of sentences and texts.

III. Those bearing on the interpretation of prohibitory and apparently conflicting texts.

IV. The popular maxims.

V. Those of a miscellaneous character.

SECTION 2. MAXIMS RELATING TO THE INTERPRETATION OF WORDS

The maxims relating to the interpretation of words proceed from various points of view. Some of them supply special rules according as the word is an adjective or a substantive or a verb. Some of them are based on considerations as to whether the word is to be taken in its usual popular sense or in its etymological sense. And if it is to be accepted in a popular sense, whether that popular sense is to be the primary or the secondary phase of it. Again, if it is to be taken in a secondary sense, whether that secondary sense is a technical one, according to the peculiar nature of the subject-matter, or in a figurative or metaphorical sense.

Class I. Maxims relating to the interpretation of words may be sub-divided into the following groups:

Group A. Maxims of the nature of the Sruti principle as regards the interpretation of words, as for instance, those laying down that words are to be taken in their usually accepted or popular sense.

Group B. Maxims partaking of the character of Linga principle showing either those cases in which a word is used more or less in a

technical or special sense indicated by the scope of the subject or cases in which the usual sense of the word is contracted, extended or varied by the context, or where a figurative sense is indicated.

Group C. Maxims allied to the principle of Vakya, laying down presumptions with regard to the number and gender of words.

Class I. Group A

1. *The sense as understood by current usage is to prevail*: पदार्थप्राबल्याधिकरणम् ।

Usage sense.

For instance, we have to ascertain the meaning of *achemana* of the Smriti text: "By *achemana* proceed to begin the ceremony." In the Vedas the ceremony is to begin not by *achemana* but by establishing the Vedi. So the question arises as to whether the meaning of this word in the Veda is different from its current meaning. This maxim enjoins that the current meaning would prevail, and also as to the different modes of practising *achemana* the current usage is to prevail and not the old Vedic use.

2. *The popular meaning overpowers the etymological*: रूढ़िर्योगमपहरति ।

Popular meaning.

The word '*pankaja*' (marsh grown) would illustrate this Nyaya. Its etymological meaning is any thing that grows in the marsh, But the popular meaning of the word is 'lily', which is only one out of many plants growing in the marsh. Thus the latter meaning of the word prevails.

3. *The Sruti sense is not to be avoided*: निरपेक्षो रवः श्रुतिः

Sruti sense.

The word 'Keshava' in the text: "True way of worshipping Vishnu is to worship Keshava;" whether this is to be understood in its literal sense or as indicating any form of Vishnu? The decision is, 'the usual sense which strikes one at the pronunciation of the word is its meaning.' 'If the word Keshava had not been expressly mentioned,' adds Udichya Bhattacharya, 'then there would have been room for finding out the proper name by the Linga principle.' [Adhikarana Kaumudi, para 80].

अथ श्रुत शब्दात्यागः । यथा तद्विष्णोरिति केशवं यजते इति अत्र केशव वाचकनाम्नां बहूनां सत्वात् केन नाम्ना उल्लेख इति तत्र सिद्धान्तः यथा श्रुतवीहारेण वक्तव्यमिति वीहारो व्यवहारः तथा च उत्पत्तिवाक्यस्य बलवत्वात् केशव तुल्याख्यं न तु मन्त्रस्थं विधिरेव ति यत्र विधौ नाम नास्ति तत्र लिङ्गस्थं ग्राह्यं ।

4. *Foreign words are to be taken in the sense which they bear in*

Foreign words in their foreign sense.

the foreign language, provided such sense can be rendered into Sanskrt: [Jaimini I. iii. 6.]

म्लेच्छप्रसिद्धपदार्थप्रामाण्याधिकरणम्

For example, the foreign word *tamarasa* which means lily flower should be taken in that sense, though such a sense of the word is not to be met with in the Nirukta (the Vedic vocabulary).

Same term in modern and ancient texts.

5. *When an ancient text such as of the Vedas and a modern text contain the same term, the term must have the same meaning*: प्रयोगचोदना भावादर्थैकत्वमविभागात् । [Jaimini I. iii. 30].

Class I. Group B

6. *The wooden-sword maxim* : स्फादिन्याय:

Wooden-sword maxim.

Jaimini's text संयोगानुसारेण व्यवस्थितत्वाधिकरणम् 'The sword, the potsherd, the sacrificial vessel called the Agnihotra Havami *etc.*, these ten are sacrificial weapons' is to be considered in connection with this maxim. The first word of the text *Spha* स्फा (sword) gives this maxim the name. The objector says that these words in the above text should be taken in their generally accepted popular sense, and should be indiscriminately applied according to that sense. The answer is in the negative. Each term is to be applied according to a particular requirement of the Yaga so as to suit it. Jaimini (III. i 11) has laid down "What is prescribed as a means to an action, is to be taken in a sense suited to the performance of the action." द्रव्यं चोत्पत्तिसंयोगात् तदर्थमेव चोद्यते । For instance, potsherd (*Kapala*) in connection with a *Yajna* means a baking earthen vessel. It is not necessary that the vessel should have that particular shape which the word usually denotes. Sword (*Spha*) in connection with a *Yajna* means a pushing instrument and not a cutting instrument, for a *Yajna* requires no cutting instrument. The main object in the subject of the text is the performance of the *Yajna* and the mention of these ten weapons is a subordinate matter. Therefore, the words describing these weapons must be understood in relation to the scope of the subject-matter.

7. *The Aruni maxim or the red-coloured maxim* : अरुणान्याय:

Aruni or the red-coloured maxim.

It relates to the following text from the first word of which it has taken its name. "With a red-coloured, yellow-eyed, one year old cow *Soma* is to be bought.' अरुणया पिङ्गाक्ष्यैकहायन्यासोमं क्रीणाति इति । [Jaimini III. i. 12.]. The objector would say that in order to discharge

the duty of buying *Soma*, you must not only make the purchase with a cow which is yellow-eyed and one year old, but some how or other you must give effect to the word 'red-coloured.' The question that arises is whether red-coloured is something else than the intended quality of the cow ? The reply is that the adjective does not relate to anything else than the identical cow which is yellow-eyed and one year old. The commentators mainly direct their attention to this question. 'When a thing is presented to serve the purpose of an action and there are more than one adjectives used in the text relating to the action, all the adjectives must be taken to refer to the particular thing and not to separate things to be implied.' The text of Taittiriya Samhita 6. 1. 6-7, "He is to buy *Soma* with red-coloured, an year old and yellowish-eyed animal." **अरुणया पकहायन्या पिङ्गलाक्ष्या सोमं क्रीणाति ।** well illustrates this maxim, The adjective *red-coloured* must be taken to refer to the animal as well as the other two adjectives and not to something else to be implied, as for instance, cloth. Or in other words, the sentence is not to be read, as if it were, he is to buy *Soma* with red cloth and with an year old and yellowish-eyed animal. It would militate against the axiom of Laghava (simplicity). It has been well observed by K. L Sarkar [p. 274] that this maxim further teaches that the qualifications that the animal with which the *Soma* is to be bought should be red-coloured *etc.*, are not to be taken as conditions precedent to buying the *Soma*, but as mere descriptions of the animal with which it is to be bought, to secure that it should possess a reasonable purchasing power.

The maxims making the distinction between adjectives, substantives and verbs are peculiar to the Mimansa system of interpretation. The wooden-sword maxim and the Aruni maxim relate to the distinction between adjectives, substantives and verbs. The substance of the wooden-sword maxim is, that where a word represents a thing which is to be used in connection with the action enjoined by an operative verb, the sense of the word representing the thing should be so taken as to suit the action enjoined. If it has several connotations, the word should be taken connoting that quality only which is required by the exigencies of the action. The word 'Bench' well illustrates this maxim. It means a bench for the Judge to sit on and from this sense it now means a court, so its meaning is not confined to the peculiar form of the seat called bench. This maxim is inculcated by Sutra 11, Chap. I, Book III : "Material things being associated with an originating (action) are (to be taken as) prescribed to suit the purpose of that originating action.' **द्रव्यं चोत्पत्तिसंयोगात् तदर्थमेव चोद्येत ।** This means that the words which obviously purport to be subordinate to

the principal word enjoining duty, are to be interpreted according to the sense of the principal word.

Maxwell has also accepted the same principle in the opening Chapter II of his Book. He remarks, "The words of a statute are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and, the object to be attained. It is not because the words of a statute, or the words of any document, read in one sense will cover the case, that is the right sense. Grammatically they may cover it; but whenever a statute or document is to be construed, it must be construed not according to *the mere ordinary general meaning of the words, but according to the* ordinary meaning of the words as applied to the subject-matter with regard to which they are used."

As regards the wooden-sword maxim the principal thing in the subject of the text is the performance of the Yagya, the mention of the ten weapons being a subordinate matter; so the words describing these weapons must be understood in relation to the subject-matter. Having dealt with the interpretation of subordinate words which signify objects or things, Jaimini goes on to discuss the question of interpretation of subordinate words which express qualities of things *i. e.*, which are adjectives. The maxim is: "Qualifying words attached to the names of things which are means to an action are simply descriptions of those things, and do not operate as conditions precedent to the action itself." The Sutra literally translated runs as follows: In asmuch as they have the same purpose, things and qualities thereof contribute to one and the same action as a matter of Niyama (arrangement)." Its significance is clear that nouns are subordinate to the verbs which are the operative part of a text. Adjectives prefixed to such nouns cannot be separated from the nouns, so as to give them an independent character as constituting an essential condition for the performance of the duty. Incidental references of objects and persons together with the qualities that they should possess in connection with a duty would not give these qualities the force of a Vidhi, forming an indispensable condition. In that case it will be impossible to perform any duty. The following text of Manu (III. 10) with regard to the duty of marrying illustrates this point: "The bride should among other things have a name which is easily pronounceable, should have a gaiety look like that of a swan, whose hair is gently flowing."

अव्यङ्गाङ्गीं सौम्यनाम्नीं हंसवारण गामिनीं ।
तनुलोमकेशदशनां मृद्वङ्गीमुद्वहेत स्त्रियं ॥

The marriage in many cases would be impossible if these adjectives be taken as essential parts of the Vidhi for marrying. So the adjectives must be taken as mere matters of description that may be desirable but not as conditions precedent affecting the question of the validity of the marriage itself.

The red-coloured maxim is on a par with that relating to marriage quoted above and signifies that the use of the adjectives is a mere Niyama and does not affect the validity of the duty enjoined. Kumarila Bhatta also holds that the expression 'red-coloured' has not the force of a Vidhi. The term *Artha* (meaning) ..... according to the Mimansa system implies the signification of a word which it possesses by itself and is not derived from the power of other words—*Ananyalabhya-shabdartha* अनन्यलभ्यशब्दार्थः। Apadeva refers the text from Mimansanyaya Prakasha (p. 17) स एव हि शब्दस्यार्थो यः प्रकारान्तरेण न लभ्यते अनन्यलभ्य शब्दार्थ इति न्यायात् ।The sense of the words made out from the context, that is, by the Linga principle, is not strictly speaking its *Artha* but its *Shakti* (latent power). The sense of a word derived from the context (Linga) is usually called *Lakshna Artha.* That is the sense which the Mimansakas have clearly expressed. The '*Artha*' of a word as distinct from its power may be different, etymological, conventional, primary, secondary, technical, *etc.* When the etymological and popular meaning of a word is identical and is its only meaning, there can be no question as to its import, and the case becomes one of Sruti.

8. *Words which are used in the Shastras ought to be taken in the sense attached to them by Shastric usage* : शास्त्रप्रसिद्धपदार्थप्राबल्याधिकरणम् [Jaimini I. iii. 5].

In Vedas, in the text *Yava Mayascharu*, 'Yava' means another kind of corn of the same species called *priyangu* and this is its popular meaning; but according to the Shastras it means *barley*. This word would, therefore, be used in the sense that is prescribed by the Shastras and not in any other.

9. *The Sarvasva-dakshina maxim* : सर्वस्वदक्षिणान्यायः

When the literal interpretation of a word would make another word meaningless that interpretation should be taken in a qualified sense. In the text—"In the Vishvajit sacrifice the priests shall have '*sarvasva*' (the whole property) as presents; in the Sarvajit sacrifice they are to have some trifling presents; in the Sarvamedha sacrifice they are to have the whole property as well as some trifling presents," if the word *sarvasva* be interpreted literally, the expression 'they are to have the whole property,

The use of a word in a qualified sense.

as well as some trifling presents' would become meaningless. So the said word would be construed to mean land and valuables excluding earthen pots *etc.*

अथ सर्व्वस्वदाक्षिण्याधिकरणं । उद्गातृपूर्वान् विश्वजिति प्रतिस्तोतृ पूर्वान् सर्व्वजिदादिषु चतुर्दशसु सर्व्वमेधे तूभयमिति श्रुत्या विश्वजिति उद्गातृ प्रधानाः षोड़शर्त्विजः सर्व्वजिदादौ प्रतिस्तोतृप्रधानाः षोड़शसर्व्वमेधेतु उद्गातृ प्रधानाः प्रतिस्तोतृप्रधानाश्च । [Adhikarana Kaumudi para 4.]

10. *The Phalachamasa maxim* : फलचामस न्यायः

The use of a word in a technical sense.

When the context indicates the technical sense of a word, it should be taken as such and not in its literal sense. The text—"Among the priests the remnants of the *homa* fruit cup (*Phalachamasa*) should be distributed for food"—illustrates this point. The expression 'fruit cup' is not food in its literal sense, but in a technical sense it means a cup full of barley, rice, oil and green beans together with a cocoanut; the word *phala* signifying cocoanut and the word *chamasa* denoting a cup containing eatables in general, such as barley, rice *etc.*

फलचमसाधिकरणं । प्रोद्गातणां फलचमसं हुत शेषं भक्ष्यं ददातीति श्रूयते प्रोद्गातृणामिति बहुवचनात् प्रोद्गात्रादीनां ऋत्विजां सर्व्वेषामित्यर्थः यवव्रीहितिलै.मुद्गसाधितश्चमसः स्मृतः । [Adhikarana Kaumudi para 6.]

11. *Multiplicity of sense must not be attributed to the same word:*

Same word must not have several senses.

The text—"The *Aditya* is the sacrificial post."—well illustrates this maxim. The word '*Aditya*' means a post as the Sun. If its meaning be taken as 'bright' in this text, then 'brightness being a quality of the Sun, it would be only a *shakti* or *samartha* (force) of the same sense. So to avoid the multiplicity of sense it should be taken as 'bright.'

[Adhikarana Kaumudi, para 50.]

अथ अनेकार्थत्वकल्पना । आदित्यो वै यूपो भवतीत्यत्र अदित्यपदेन आदित्यवर्ण उच्यते ।

12. *The Vyaktirachana maxim* : व्यक्तिरचना न्यायः

General word meaning an individual object.

'Where a general word occurs in connection with a particular proposition, the general word is to be understood to stand for an individual object proximately connected with the proposition.' Let the text—"Perform the homa (sacrifice) by the mantra called *Agneyi*"—be considered in this connection The question arises as to what is the meaning of the mantras called *Agneyi.* The sense is that *Agneyi* mantra is to be used which is found in the proximity of the text referred

to but not any other mantra.

अथ व्यक्तिरचनान्यायः। आग्नेय्या जुहोतीति श्रूयते……सर्व्वैव ग्राह्या इति न सम्भवति……सिद्धान्तः व्यक्तिरचनानां सन्निहित विशेष परत्वात्……पाचकादि शब्दाः पाचकशब्दः पाक कर्त्तृत्वमात्रे प्रयुज्यते……न तत्र प्रयोगः एवञ्चाग्नेयी पदमपि व्यक्तिमात्रवाचकं……सन्निहितैव ऋक्ग्राह्या। (Adhikarana Kaumudi para 41).

13 *The Vaiswadeva maxim:* वैश्वदेव न्यायः।

Symbolical meaning preferred to natural meaning.

"When two or more words have together acquired a symbolical meaning, they are to be taken in that symbolical meaning, and not in their natural meaning." वैश्वदेवादिशब्दानां नामधेयताधिकरणम् [Jaimini I. iv. 10].

14. *The Pranabhrit maxim:* प्राणभृत् न्यायः

One object of a class gives name to the whole class.

"The peculiar feature of one leading object belonging to a class may give name to the whole class. '*Pranabhrit*' literally means to inspire life; but the expression forms the commencement of a mantra which is used in consecrating certain bricks. Hence the word has come to mean a kind of brick प्राणभृदादिशब्दानां स्तुत्यर्थत्वमधिकरणम् [Jaimini I iv. 17]. This is the way in which the word *Ajjyani* also has come to mean another class of bricks." (p. 278).

Nanda Pandit in his treatise '*Dattaka Mimansa*' has made use of this maxim to establish that though the word 'substitute' was primarily applied only to six descriptions of sons, subsequently it was used in an extended secondary sense meaning all the twelve descriptions of sons.

15. *The Pillar Sacrificer maxim:* यजमानो यूपः

Figurative sense.

'Where a word would be devoid of meaning except in a figurative sense, it should be taken in the figurative sense.' अथ यूपादिशब्दानां यजमान स्तुत्यर्थाधिकरणम्।

Sense of a vague word to be gathered from what follows.

16. *Where a word is left vague, its meaning should be made definite by reading it with what follows:* सन्दिग्धेषु वाक्यशेषात्। The text—"He places besmeared pebbles of sand. Ghee is indeed light." शर्करा अक्ता उपदध्यात् तेजो घृतम्। Taittiriya Brahmana (3, 1, 2, 6, 12)··· illustrates this point. Here 'besmeared with ghee' is to be understood.

Class I. Group C

17. *The Grahaikattva* (single cup) *maxim or the maxim regarding general clauses* ग्रहैकत्व न्यायः

'When a word is used in a text having the nature of a general

Singular number includes plural.

clause (*Uddeshya Vakya*), the singular number includes the plural and the masculine gender includes the other two genders.' Although the word 'cup' is used in the singular number in the text 'He washes a cup,' it should be understood that all cups should be washed.

18. *The Pashvaikatwa* (single animal) *maxim* or the maxim regarding the number and gender of words which enter into an obligatory text : **पश्वेकत्व न्यायः**

'A word occurring in an obligatory text (Vidhi Vakya) should be limited to the number, gender *etc*, which it grammatically bears in that text.'

For instance in the text—'By means of animals worship the Rudras' the opposite side contends that as the Rudras are many so there should be one animal offered for each Rudra. Jaimini decides, "No, in the absence of anything to the contrary the number should be that indicated by the inflection."

19. *The duality of Habis maxim* : **हविरुभयत्व न्यायः**

"Where the rule laid down in the one case is to govern another case, it is of no consequence that some of the facts of the case in which the rule is stated, are stated in the dual number, whereas the facts of the other case are in the singular number." For example : "The two ***habis*** (barley and rice) of which the ***charu*** is to consist are to be anointed by ***ajya*** (a particular kind of Ghee) in the primary Putreshti Yagya."

अथ हविरुभयत्वाधिकरणं पुत्रेष्टि यागे श्रुतिः ।

व्रीहिभिर्यवैश्च प्राजापत्यं पृथक् श्रययेत् । [Adhikarana Kaumudi, para 8.]

'With regard to a secondary *Putreshti* Yagya, it is said that the ***charu*** is to consist of barley. The rule of anointing the ***habi*** with ***ajya*** in the primary Yagya is to apply to the secondary Yagya. The question is: Is the propriety of such an application affected by the fact that the ***habi*** in the one case consists of two things, whereas in the other of one thing only? The answer is—no, because the difference is with regard to an incidental matter.'

20. *The Kapijjala* (patridge) *maxim* : **कपिञ्जल न्यायः**

In a clause providing for infliction of suffering on a creature, if the object of the infliction is expressed in the plural number, the number should be limited to the lowest numeral which would make a number. For instance, in Sanskrit when there is a plural number, not more than three should be taken. This maxim is quoted in the Dattaka Chandrika.

SECTION 3. MAXIMS BEARING ON THE CONSTRUCTION OF SENTENCES AND TEXTS

The principles of distinguishing between obligatory and non-obligatory or quasi-obligatory texts and the interpretation of the Smriti law and usage which are included in this class will be dealt with in detail in the next succeeding chapters in connection with the topic of the application of texts and the interpretation of the Smriti law and usage. The maxims relating to the negative Vidhis and cases of conflict of texts have been dealt with in Section 4. Leaving out these several groups of maxims, the division of the rest may be given in **class II** as under (*x*):

Group A. Maxims of strict construction of texts and sentences; that is, those which are mainly of the nature of the Sruti construction.

Group B. Maxims of construction of texts and sentences by context; that is, those which are chiefly of the character of Linga.

Group C Maxims involving grammatical construction, that is, those relating to the Vakya principle

Group D. Maxims of a somewhat free construction of texts and sentences, that is, those which proceed more or less on the lines of Prakarana principle.

Various considerations arise as to the interpretation of texts and sentences: such as to prevent interference with the literal meaning, to determine the meaning in doubtful cases, to settle whether a clause is to be taken as a complete sentence or is to be read with another clause, to distinguish between a reciting clause and an operative clause or to distinguish between a subordinate clause and the principal clause, and to differentiate between the primary law (Sruti) and the derived common law (Smriti).

Class II. Group A

21. *The Grahpatya Nyaya or household-fire maxim*: **गृहपत्य न्यायः**

Strict construction.

This is the fundamental maxim of strict construction.

22. *The Ratri Satra maxim*: **रात्रिसत्र न्यायः**

अथ रात्रि सत्राधिकरणं। प्रति तिष्ठन्ति हवै य एताराात्रिरुपयन्तीति श्रूयते……चिरजीविनो भवन्तीति यावत् एतावासन्तौः प्रकरणात् अधिकार्थें उपयन्तीति। [Adhikarana Kaumudi, para 2:]

That construction is preferable which is nearer to the literal

(*x*) The above classification has been borrowed from the learned work of K. L. Sarkar pp. 286-311.

Preference to literal construction.

construction, even though by it you get only a non-obligatory text and not an obligatory one. Udeechya Bhattacharya has placed Anusanga above Linga although generally Anusanga is regarded as a part of the Vakya principle which is inferior to Linga. But the point of the maxim is that it is better to presume a passage to be an Arthavada than a Vidhi as implied either by Linga or Vakya.

23 *The Prastara-praharana-Nyaya* or *the maxim of throwing grass into the fire.* **प्रस्तरप्रहरण न्याय:** [Jaimini III. ii. 5].

Intelligible sense meaning.

" The maxim lays down that words must be taken to mean what they express by vocabulary and grammatical inflection and not as mere stopgaps to complete a rhythm There is the text '*Suktavakena parstaram praharati*' (he throws the grass by *Suktavaka*). The objector says 'by *Suktavaka*' means 'by making an intonation of the measure of a *Suktavaka*'. The conclusion is that the expression 'by *Suktvaka*' means by intelligently reciting *Suktavaka* and not by making a sound like that of the *Suktavaka*. This maxim in fact illustrates the axiom that every word must be taken to have an intelligible sense according to grammar and vocabulary."

24. *The Rathakara maxim* : **रथकार न्याय: ।** [Jaimini VI. i. 12.]

The text having doubtful point.

This maxim lays down that where there is a text on a doubtful point, we should follow the text and not indulge in speculative reasons, as in the case of the *Rathakara* being entitled to sacrifice, though he is of a mixed caste.

25. *The Nishadasthapati Nyaya or the low-caste-priest maxim* : **निषादस्थपति न्याय: ।** [Jaimini VI. i. 51.]

Low-caste priest maxim.

" When a compound word can be construed as a compound of an adjective and a noun (*Karmadharaya*), it should not be construed as a compound of two nouns (*Tatpurusha*), because the former combination is spontaneous while the latter is far-fetched."

The interpretation of the clause '*Nishadasthapati*' in the Nishadasthapati maxim may mean '*Nishada*' **निषाद** who was '*Sthapati*' **स्थपति** or *Sthapati* of the *Nishada*. *Sthapati* means a *priest* and *Nishada*, a *Chandala* The first construction, being simpler, is adopted. Nilkantha relies on this maxim to support the right of a Sudra to perform or rather get performed the *Putreshti* Yagya.

26. *The Vaishwanara Nyaya or the maxim that subordinates merge in the principal* : **वैश्वानर न्याय:** [Jaimini I. iv. 11.]

Subordinates merge in the principal.

"When a number of particular clauses collectively reproduce the purpose of a general clause, the particular clauses cannot be taken to create separate obligations in addition to that of the general clause."

This maxim which lays down that *clauses forming part of a whole Vidhi proposition are not to be separately reckoned as an independent Vidhi*, has been illustrated by Jaimini [Taittivirya Sambita (II. 2. 5) cited in I. IV. 17 (Kunte's Ed.)] by referring to the following Vedic texts :

"He obtains children. He ought to prepare a cake called *Vaishvanara* baked on twelve potsherds. A cake baked on eight potsherds purifies, by means of the *Gayatri* metre and of *Brahma Varchasa*, the child if it be a son. A cake baked on nine potsherds places in him (the son) light by means of the musical metre called *Trivrit*. A cake baked on ten potsherds grants him (literally places in him) food by means of the *Virat* metre. A cake baked on eleven potsherds puts in him spirit (in the original *Indriya*) by means of the *Trishtubh* metre. A cake baked on twelve potsherds grants him (literally places in him) cattle by means of the *Gayatri* metre. When a son is born, a pure man performs this sacrifice."

The main clause in this passage requires cakes to be prepared on twelve potsherds ; the intermediate clauses merely show the result of using 8, 9, 10 and 11 potsherds respectively. Each of these clauses is not a separate Vidhi, but merely explains the use of the twelve potsherds and their importance, twelve being the number enjoined. A similar instance may be given from modern Penal Code which lays down that when a man is found guilty of an offence which consists of several parts, each of which itself is an offence, the man is to be punished for the principal offence only. So the maxim in question practically deduces the same corresponding principle.

27. *The Arthavada maxim :* **अर्थवाद न्यायः**

Arthavada maxim.

There are clauses which are really parenthetical in a Vidhi text forming a gloss thereof. In the text "Sacrifice a white animal to *Vayu*, he is an angry god" **अथ अर्थवादाधिकरणम । ......वायुर्वै क्षेपिष्ठा देवता ।** [Adhikarana Kaumudi para 28], the clause 'he is an angry god' is a parenthetical clause, descriptive of the divinity.

This maxim is very important and has been made use of by commentators and digest-writers. An Arthavada sentence may not be found in juxtaposition with the Vidhi text to which it corresponds. A text may be an Arthavada by Prakarana ; that is, it may be connected with some Vidhi stated somewhere else. These principles have been explained and illustrated in section IV of Chapter I.

Class II Group B

28. *The Mantra-linga Nyaya or the maxim of implied Vidhis :* मन्त्रलिङ्ग न्यायः [Jaimini. I ii. 4].

Passages of the nature of Mantra (addresses and hymns) by their suggestive power imply Vidhis and are capable of being regarded as concomitants of the Vidhis implied by them.

Maxim of implied Vidhis.

29. *The Saptadasharatni Nyaya or the seventeen cubits' pillar maxim* : सप्तदशारत्नि न्यायः [Jaimini III i. 9].

When a statement of a subordinate character does not directly fit into the main obligation, in order to give it a useful meaning, it must be regarded as belonging to some incident of that obligation.

Pillar maxim.

30. *The Nivita maxim* निवीतस्यार्थवादताधिकरणम। [Jaimini III iv. 1]. This consists of statements in a series, culminating in an injunction. Of these, those which are only introductory to the injunction are to be treated as Arthavada, as in the case of the Nivita text.

Nivita maxim.

31. *The maxim that wearing gold ornaments and the like constitutes Manushya Dharma* (individual virtue) सुवर्णधारणादीनां पुरुषधर्म्मताधिकरणम [Jaimini III .iv. 8.]

Individual virtue maxim.

32. *The Mitha-asambandha Nyaya or the mutually-unconnected-clauses maxim*: मिथोऽसम्बन्धः न्यायः [Jaimini III. i. 12] :

'A subsidiary clause (*Guna Vakya*) is not generally to be taken as subordinate to another subsidiary clause because both are equally subsidiary to the main purpose and are thus co ordinates.'

Mutually unconnected clause-maxim.

The Mitha-asambandha maxim, also called the Baikankata Varana maxim is that by which the principle of *general clauses* is laid down. The Sutra on the subject runs as follows : " (General) subordinate clauses all relate to the ultimate purpose (of the Vedas), and as such one of them is not related to another, being co-ordinates ". गुणानाञ्च परार्थत्वादसम्बन्धः समत्वात् स्यात् । [Jaimini III. i. 22.]

Savara Swami explains this Sutra by referring to the two matters, *Agnyadhana* and *Pavawana*, the former indicating the sacred fire and the latter denoting an offering to subserve the sacred fire. The latter is not subordinate to the former. They are both of use in the *Darsapaurnamasi* Yagya and in other Yagyas as well.

The following text gives the maxim the said name, "Vessels made of the wood of the *true Varuna* and of the *Baikankata* are declared as

fit to serve the purpose of sacrifices. But *Varuna* is not to be used for *Homa*, the *Baikankata* vessel is to be used in making Homa Therefore the Varuna vessel is to be used generally in Yagas, except in ceremonies connected with Homa, and the Baikankata vessel also generally in ceremonies with Homa."

अग्न्याधेये वारण वैकङ्कत पात्राणि अ होमार्थानि होमार्थानि च श्रूयन्ते, तस्मात् वारणो वै यज्ञावचरः स्यात् , नत्वेतेन जुहुयात, वैकङ्कतो यज्ञाव चरः स्यात्-जुहुयादेतेन। नच व रणं वैकङ्कतानां पात्राणामग्न्या धेयेन सम्बन्धः॥

[Savara Bhashya on Jaimini III. i. 22.]

"In applying this text one is to remember, that both the directions, regarding the use of the *Varuna* wood and the *Baikankata* wood, are in the nature of general clauses. One of them does not stand in a subordinate relation to the other. But each of them is to be applied according to circumstances. The *Baikankata* vessel being suitable to Yagyas with Homa, is to be applied to such Yagya ; and the Varuna vessel being unsuited to such Yagyas, is not to be applied to them. But if one were subordinate to the other, both of them would go together. Jimutavahana utilizes this principle in paragraph 70, Chapter 2, Colebrooke's edition. In fact, there being many *Gunavadas* in a particular Shastra it is necessary. to settle which of them go together and which of them are separate from each other."

33. *Mitha-sambandha* otherwise called *the Vartraghni Nyaya* or *the mutually-connected-clauses maxim* : वार्त्रघ्नी न्यायः [Jaimini III. i. 13]:

Mutually connected clause maxim.

'When from the context it appears that a subsidiary clause (*Guna Vakya*) is reciprocally connected with a particular subsidiary injunction (*Guna Vidhi*), it is to be taken as restricted to that subsidiary injunction.'

The Mithasambandha maxim is one of a converse character and is connected with the following text:—

"They recite the *Vartraghni* verses on the full-moon day, and the *Vridhanvati* verses on the new-moon day. In this text, the subordinate matters *Vartraghni* and *Vridhanvati* are linked together, so that one must precede and another follow, in course of the performance of the Darsa-paurnamasi Yagya. This being so, they are connected with each other and are also inter-related. The Sutra says, 'subordinate matters are connected with each other, when they do not relate to the general purpose.' मिथश्चानर्थसम्बन्धात्। [Jaimini III. i. 23]. Thus, these two maxims, between them, explain when two given Gunavadas (subordinate statements) go together and when they do not."

It has been explained that a statement occurring in a complex Vidhi text which is separable from the operative clause, and which is merely of the nature of a gloss upon it, is an Arthavada. But every statement occurring in a Vidhi text, in addition to the terms conveying the injunction, does not fall under this category. There may be a statement in a Vidhi text inseparately connected with its injunctional part; such a statement must be regarded as a part and parcel of the Vidhi.

34. *The Mushtikarandi Nyaya or the maxim of closing the fist etc.'* मुष्टीकरणादीनां कृत्स्नप्राकरणिकाङ्गताधिकरणं [Jaimini III. i. 14]

Closing the fist maxim.

"Where there are two or more subordinate clauses, embodying conditions for the performance of an action elsewhere stated, these clauses are not to be read as successively qualifying each other, but as co-ordinate, both equally bearing upon the action to which they relate."

35. *The Suktavaka maxim* : सूक्तवाक न्याय: [Jaimini III ii. 6]

Suktavaka maxim.

"When a complex text consisting of parts indiscriminately refers to two cases, much of the complex text as is applicable to the one case should be applied to that case, and so much of it as is applicable to the other should be applied to that other."

36 *The Angangi Nyaya* अङ्गाङ्गि न्यायः *or the maxim of the subordinate and the principal* : [Jaimini II. ii. 3]

The principal and the subordinate maxim.

"Where there is an isolated passage which is not complete, or requires to be attached to something else, it must be read into the texts regarding the intended main object."

37. *The maxim of the Incidental* प्रतिपत्तिकर्मे न्यायः [Jaimini IV. ii 4]; that is to say, the incidental is that which is of no eventual use though comprised in a transaction. The text is : 'The whole animal is to be offered but only the flesh is to be used for worship throwing off the blood and the intestine.' Here blood and intestine cannot be altogether avoided, though not required for the worship. They are *Pratipatti* (incidental). Thus if a Mimansaka were present when the lady lawyer in the Merchant of Venice insisted on 'not a drop of Christian blood but a pound of flesh only' he would have confronted her by this maxim which made the shedding of blood incidentally necessary.

Maxim of the Incidental.

38. *The Abhikramanadi Nyaya or the stepping-forward maxim :* अभिक्रमणादि न्याय: [Jaimini III. i. 10]

'A clause describing the manner in which an obligatory act is to be commenced, is not to be taken as optional, but as forming part of the obligatory act.'

Stepping forward maxim.

This maxim lays down this principle, the substance of which is: 'A clause describing the manner in which an obligatory act is to be commenced, is not to be taken as optional, but as forming a part of the obligatory act.' This maxim takes its name from the text: "He, going forward offers oblation by means of the conquest ceremony." अभिक्रामं जुहोत्यभिजित्वा इति [Savara Bhashya on Jaimini III. i. 19] 'With regard to this text the objector suggests that the act of 'stepping forward' should be read separately from the operative words of the *Prayaiya* (sub-ceremony); but it cannot be so separated and it must be read as a part of the ceremony. The Smriti law regarding the ceremony of *Putreshti Yagya* in connection with the act of adoption will better illustrate this principle. The question arises whether the act of adoption can be validly performed without a *Putreshti Yagya*; or in other words, is Putreshti Yagya separable from the act of adoption, and is the statement regarding it liable to be taken as an Arthavada? According to this maxim one cannot be separated from the other and they jointly constitute one Vidhi. The Privy Council has held that the performance of the Yagya is not necessary in cases of adoption by *Sudras*. This is so since Sudras are incapacitated from performing a Yagya.

39. *The Amiksha Nyaya or the whey maxim:* आमिक्षा न्यायः [Jaimini IV. i. 8]

'An act which is described merely as incidentally following an obligatory act, is not an obligatory act as in the case of the Amiksha text.'

Whey maxim.

It has also been shown that *Hetuvannigada* and *Vidhibannigada* maxims lay down the principle that statements in the nature of reasoning and collateral statements are non-obligatory. There is another class of statements which expresses incidental sequences. These also have not the force of a *Vidhi*. Amiksha maxim lays down this principle, the substance of which is: 'An act which is described merely as incidentally following an obligatory act, is not an obligatory act.' It has reference to the following text: 'Bring curds and introduce into it hot milk,' it is the Amikshadish to be offered to the Vaishwadevas. The whey is to be disposed of in other ways? तप्ते पयसि दध्यानयन-स्यामिक्षा प्रयुक्ताधिकरणम् । [Jaimini IV. i. 8].

As regards this text the objector says that as by the same act of mixing curds with hot milk (*Amiksha*) the solid portions and (the *Vajina*) the watery fluids are formed, both must be regarded as

sacrificial materials The author replies that as the whey is formed only incidentally, the *Amiksha* (solidified milk) is the principal thing. It establishes the important principle that what is stated as an incidental sequence is not to be regarded as an essential part of a Vidhi text. This principle has been made use of while dealing with the law of adoption. The difference between statements of matters which are essential and those which are subordinate has been clearly set out by the Mimansa writers.

The latter are called Gunavadas which are included in Arthavadas. Later Brahminical writers are often found to ignore this distinction and to take everything occurring in the Shastras as obligatory. The resultant effect of this is that very mischievous results arise as regards the right of two classes of persons, namely women and Sudras. There are many texts dealing with their disparagement merely of the nature of Gunavadas, yet they have been given the rank of Vidhis. But, as usage is an important factor of law, it is very difficult to undo the mischievous effects thus produced on the law of the country. Originally Manu and Jaimini, never made the status of women inferior to that of men nor did they in any way compromise their position. Yet later-day writers followed usage and laid down that women had no rights unless recognised by express texts. As regards Sudras also it is clear that their right to perform sacrifices has been restricted by express texts according to the principles of construction as given by Jaimini.

The proper construction of the texts of the Shastras clearly gives general rights to these two classes of persons subject to their curtailment by express texts. But it has been wrongly assumed that they have no rights unless given by express texts. It is mainly due to giving subordinate matters which are in the way of *Gunavadas*, the rank of *Vidhis*.

Class II. Group C

40. *The Ekavakyata or complex sentence maxim* एकवाक्यता न्याय : [Jaimini II i. 14]

Complex sentence maxim: "A complete sense makes a complete sentence, and where it is divided into two clauses, such clauses are interdependent upon each other."

41. *The Vakyabheda Nyaya* or *the disintegration-of-sentences maxim* : वाक्यभेद न्याय : [Jaimini II i 15]

Disintegration-of-sentences maxim. "When the sentences are parallel and co-ordinate, they should not be read into each other."

The Ekavakyata maxim and its converse, the Vakyabheda maxim form the basis of syntactical construction which derives its importance from the absence of the system of punctuation

in Sanskrit as is found in other modern languages. The elaborate inflections (*Vibhakti*) of the Sanskrit grammar and the numerous recognized forms of combinations, called *Samashas*, remove the necessity of punctuation. These grammatical developments are subsequent to the Vedic era. Further difficulties in settling syntactical connections arise, and in the old Brahmanic literature the connecting links are either missing or are of an indefinite kind. But in the Smriti literature these difficulties are not so abundant.

42. *The Anusanga Nyaya or the ellipsis maxim*: **अनुषङ्ग न्यायः** [Jaimini II. i. 16]

Ellipsis maxim.

"Where there is a number of incomplete clauses, followed by one which is complete by a finite verb, this last should be read at the end of each of the other clauses to make them complete."

This maxim is illustrated by Jimutavahana in his discussion on the following text of Manu: "It is admitted, that of a woman married by the ceremonies called Brahma, Daiva, Arsha, Gandharva and Prajapatya, the property shall go to her husband, if she dies without issue. But her wealth given to her on her marriage in the form called Ashura or either of the other two (Rakshasa and Paisacha), is ordained, on her death without issue, to become the property of her mother and of her father." (*a*)

"In the above text you find in the second sentence the words 'wealth given to her' before the words 'on her marriage in the form *etc.*,' Jimutavahana says that these words 'wealth given to her *etc.*' should also be inserted in the first part of the sentence after the words 'the property' by the principle of Anusanga. Thus Anusang means, that an expression occurring in a subsequent clause is often meant also for the clause or clauses preceding it; and that it is only for economy that it is expressly mentioned in the last clause only." (*b*)

The Adhikarana gives the following texts by way of illustration of the Anusanga principle: "Oh Agni! I offer my sacrifice to thee. I overcome (my) harsh tongue, I overcome my vexatious tongue, by the body latent in iron, latent in silver, latent in gold—(thy body oldest and lying in a cave" **याते अग्नेयासया रजासया हरासया तनूर्वर्षिष्टा**

(*a*) Colebrooke's Dayabhaga p. 17. Cf. Manu IX, 196, 197;

ब्राह्मदैवार्षगान्धर्वप्राजापत्येषु यद्वसु ।
अप्रजायामतीतायां भर्तुरेव तदिष्यते ॥
यत्त्वस्याः स्याद्धनं दत्तं विवाहेष्वासुरादिषु ।
अप्रजायामतीतायां मातापित्रोस्तदिष्यते ॥

(*b*) K. L. Sarkar—Mimansa Rules of Interpretation p. 308.

गह्वरेष्टो वचो अपावधी त्वेषं वचो अपावधीत् स्वाहा। The passage with its ellipsis filled up would stand thus: "Oh Agni ! (it is by thy body) which (is) latent in iron (and) Oh Agni ! (it is by thy body) which (is) latent in silver, and Oh Agni ! (it is by thy body) which is latent in gold— (it is by thy body) oldest and lying in a cave that I overcome (my) harsh tongue, I overcome (my) vexatious tongue"

43. *The Angapurvabheda Nyaya* अङ्गापूर्वभेद न्यायः or the maxim that a separate limb of a Vidhi has a separate sanction : [Jaimini II, 2.1]

"Where there is a number of clauses, each of which is in the nature of a subordinate Vidhi clause, each of them should be construed as having separately the transcendental sanction."

44. *The Tadadi utkarsha Nyaya or take it-forward maxim:* तदाद्युत्कर्ष न्यायः [Adhikarana Kaumudi]

Take it forward maxim.

"Where a preceding clause is wanting in something, which is indicated in a following passage, the thing indicated may be read into the former clause by way of anticipation."

45 *The Tad-apakarsha Nyaya or take-it-backward maxim:* तद् अपकर्ष न्यायः (Adhikarana Kaumudi)

Take-it-backward maxim.

"When the reverse is the case, the reverse process should be adopted."

Tadadi-utkarasha and *Tadapakarsha* maxims are particular cases of the Anusanga maxim. In Tadapakarsha a clause, occurring in a subsequent sentence, is to be read over again in a previous sentence, but in Tadadi-utkarsha the reverse is the case. By these maxims a sentence is bodily transferred from one place to another. Generally, it is not permissible excepting in rare cases. In Sutra 24, Chapter II, Book I, Jaimini distinctly disapproves Padapakarsha (transference backward), where it is possible to avoid it by taking a clause to be a Prakarana. प्रकरणे सम्भवन् अपकर्षो न कल्पयेत् विध्यानर्थक्यं हि तं प्रति।

These maxims are not restricted to transferring clauses backward and forward but are also applicable in adjusting the time of application of texts by shifting the time backward and forward, when two texts happen to point to the same time for their application. This matter may be illustrated by a passage from Adhikarana Kaumudi of Udeechya Bhattacharjee : "There is one text, enjoining the performance of Homa just at the moment the sun rises. There is another text enjoining that one should bathe just at the moment." This being so, Apakarsha would enjoin bathing before the rising of the sun and the Homa at its time. Then he gives a similar case of Utkarsha. "The Sapinda

Saraddha is to be performed in the afternoon and then the annual Saraddha. But the time appointed for the annual Saraddha may fall at noon When this is so the annual Saraddha must be shifted forward by Utkarsha."

46. *The Upavita Nyaya or the sacred-thread maxim*: उपवीत न्यायः [Jaimini III. i. 21]

Upavita or sacred-thread maxim.

'When between two descriptive clauses, a finite verbal clause intervenes, they are to be regarded as separate propositions, when there would be doubt as to there being an identical proposition as in the case of the Upavita text.'

This maxim relates purely to syntax. The text, illustrating it, is summarised as follows: In the Prakarana of the Darsha-paurnamasi Yagya in the 7th and 8th *Anuvaka* there is a description of the subordinate Yagya named *Samidhini*. In the 9th *Anuvaka* there is a description of the Nivita ceremony preceded by some injunctions. In the 10th there is some matter connected with the subordinate *Samidhini* ceremony. In the 11th there is the injunction about the *Upavita*. Now the question is this. Is the *Upavita* ceremony a *sub-prakarana* of the *Darsha-paurnamasi* through the subordinate *Samidhini* ceremony or is it a direct Prakarana of the *Darsha-paurnamasi Yaga*? But between the 8th and 10th Anuvaka there is the 9th, which has nothing to do with the *Samidhini*. The answer is that the *Upavita* ceremony must be taken to be a direct Prakarana of the *Darsha-paurnamasi* and not its *sub-prakarana* or a part of the *Samidhini*.

47. *The Isau-shyeniyavishesha dharmatidesha Nyaya* or the maxim which means that *'references for details are proper between what are equal and similar* ईषौश्येनीय विशेष, धर्मातिदेशाधिकरणं [Jaimini VII. i. 2]:

48. *The Maitravaruna maxim* : मैत्रावरुण न्यायः [Jaimini IV. ii 6]

Maitravaruna maxim.

"When an act is to be done and not assumed as done as in the case of handing over the staff to *Maitravaruna* priest, it is in the nature of an enjoined act and not merely a recited act retrospectively considered."

The question is whether the text, 'he gives the staff to the Maitravaruna priest' is a proposition which contemplates by its context a purpose as already fulfilled, or a purpose to be fulfilled. The answer is that it is the latter, and so indicates a duty to be done (*Arthakarma*) and does not merely indicate the end of a duty. Nilkantha has made use of this maxim regarding the question of the eligibility of daughter's and sister's son for adoption.

Class II. Group D

The maxims of this group mostly allow free construction and are based on considerations of necessity, expediency and convenience.

49. *The Krishnala Nyaya* or *the black bean maxim* कृष्णल न्यायः [Jaimini X. ii. 2]

Black-bean maxim.

"When, by reference, what is contained in one text is to be transferred to the subject matter of another text, the whole of the former text should not be bodily transferred, but such portions only as are not inconsistent with the latter text."

50. *The Kshameshti Nyaya* or *the burnt-offering maxim* क्षामेष्टि न्यायः [Jaimini VI. iv. 5]

Burnt-offering maxim.

"When a rule, in prescribing the mode in which an act should be done, enjoins that a certain quality should be thoroughly secured, it should be taken only to mean the securing of such a degree of thoroughness as can be reasonably expected."

51. *The Swara (chip* of wood) *maxim*: स्वरोच्छेदनाद्य प्रयोजकताधिकरणम् [Jaimini IV. ii. 1—6]

Chip of wood maxim.

"When one construction would secure convenience and economy, and another imposes labour and fruitless trouble, the former is the proper construction."

52. *The Samanasyat maxim*: समान्स्यत न्यायः

"When one thing is given to more than one person it must be equally divided among them, in the absence of any direction to the contrary. There is the text: 'In the ceremony of the exhibition of gold, let horses be given to the *Udgatri*, *Prostotry*, and *Pratitotri*.' Such being the direction the horses are to be equally divided as the Sruti approves of equal division."

53. *The Kaimutika maxim* : कैमुतिक न्यायः [Jaimini I. i. 32]

Kaimutika maxim.

"Rhetorical flourishes, meant to indicate that which applies to a case, a *fortiori* applies to a case close at hand, should not be literally understood."

The following maxims are of special character and are based on considerations of social benefit or religious purity :

54 *The Anritvada maxim* : अनृत वदन निषेधस्य क्रतुधर्मताधिकरणम् । or *the maxim that the prohibition of speaking untruth is positive law.* [Jaimini III iv. 4]

Prohibition of speaking untruth.

"The text, by which speaking falsehood is prohibited, though seemingly it is merely the recital of a moral law, should be read as a positive injunction."

55. *The maxim* of the absolute *of the three debts* ऋणत्रयस्य नित्यताधिकरणम् । [Jaimini VI. ii. 11.]

Three debts maxim.

"A text, which declares that a Brahmin has the three-fold duty of sacrifice, learning and maintaining the household, must be understood to enjoin those duties absolutely, and as belonging to all the three castes."

56. *The Udbhida and Chitra maxim* : चित्रया यजेत न्याय : [Jaimini I. iv. 2]

Chitra maxim.

"When a text only indicates the performance of a ceremonial act under a certain name, but there is no text forthcoming enjoining the act and there is no sanction, it is to be read only as a text of nomenclature."

57. *The Tad Vyapadesha Nyaya or the simili maxim* : तद्व्यपदेश न्यायः [Jaimini I. iv. 5]

Simili maxim.

"When a text, if literally construed, would be subversive of the main purpose (*Pradhana Chodana*), and when it is possible to construe it as a description or name, it should be so construed."

SECTION 4. MAXIMS REGARDING NEGATIVE RULES AND CONFLICT OF TEXTS

Pratishedha & Paryudasa.

The negative texts relate to prohibitions both as against all the world as well as those against particular persons. This distinction, as explained by the Mimansakas, is similar to that between judgments or rights *in rem* and judgments or rights *in personam*. The term '*Pratishedha*' is applied to the former class of prohibitions while '*paryudasa*' to those of the latter class. For example: the text 'Do not eat fermented food is a Pratishedha, but 'those who have taken the Prajapati vow must not see the rising sun,' is a *Paryudasa*.

Their classification.

They are each sub-divided into two classes. As regards Pratishedhas, the sub-divisions are: (i) those which prohibit a thing without any reference to the manner in which it may be used, and (ii) those which prohibit it only as regards a particular mode of using it. For example; 'Do not eat fermented food' prohibits the use of it under all circumstances, while 'Do not use *Shodsin* vessel at dead of night' forbids the use of the vessel

only at the dead of night. In the two sub-divisions of Paryudasa the first relates to a person performing some specified act which is not enjoined by a Vidhi, as in the case of the Prajapati vow, while the other relates to a person engaged in performing a Vidhi; for instance, one is to do Sraddha during the full moon by virtue of a Vidhi but not in the night of the full moon. The prohibition of doing Sraddha in the night is a Paryudasa which is a sort of an *exception* or *proviso*, as 'not in the night' is an exception to the rule 'Perform the Sraddha during the full moon'.

There are four classes of negative clauses: (i) a condemnatory prohibition, *e.g.*, the *Kalanja* (fermented food) clause; (ii) absolute prohibition of things under certain circumstances, *e.g.*, Shodsin vessel; (iii) prohibition in relation to persons in a given situation *e.g.*, *Prajapati* vow; and (iv) restrictions as to action of persons engaged in fulfilling an injunction, in respect of the time, place or manner of carrying out the substantive part of the injunction.

The above distinctions are very important and must always be borne in mind, otherwise one can never follow the Mimansa writings. The second and the fourth classes are generally met with in the Vyavahara law, and the first and the third in the Vedic law. Really speaking, the first class of Pratishedhas are moral prohibitions condemning acts which are sinful, and the third class which are Paryudasa, being in the nature of religious vows, are rules affecting religious discipline. They, therefore, appertain to the Vedic law. The remaining two occur in the Vyavahara law.

Smriti writers have also introduced the question of the applicability of equitable principles as against the strict letters of the Smriti law giving rise to conflict of interpretation. The word *artha* is used in matters of litigation in the sense of relief sought. The words *arthi* and *pratyarthi* are used for plaintiff and defendant, so the expression 'Artha Shastra' means the rules of equitable relief. The conflict between Smriti texts and Artha Shastra (equitable principles) has been formulated by Smriti writers.

Thus the subject of conflict would require consideration between one spiritual rule and another; of conflict of one Vyavahara Vidhi (civil law rule) and another; and of conflict between the Vyavahara Smriti texts and equitable principles (*Artha Shastra*). There are two more topics allied to the subject of conflict which may be mentioned: (i) the application of alternative texts when the alternative events occur simultaneously or one after the other; (ii) the adjustment of two positive Vidhis, one of a general character and the other of a particular one. This class of maxims may, therefore, be classified as follows :—

Group A. Maxims regarding Pratishedha or prohibition proper,

Group B. Maxims regarding Paryudasa or exceptional and qualified prohibitions, and the like.

Group C. Maxims relating to alternative causes and the adjustment of general and particular Vidhis.

Group D. Maxims relating to the equitable application of Smriti texts (*a*).

Class III Group A

Maxims regarding Pratishedha or prohibition proper:

58. *The Kalanja maxim:* **कलञ्ज न्यायः**

Four maxims regarding Pratishedha.

"A general condemnatory text is to be understood not only as prohibiting an act, but also the tendency, including the intention and attempt to do it." [Jaimini VI. ii. 5]

प्रतिषद्ध कर्म्मणामनुष्ठानेऽनिष्टापाताधिकरणम् ।

Kalanja maxim.

The Kalanja maxim consists of the following two Sutras of Jaimini [VI. ii. 19 and 20]:

(1) "In an absolute prohibition a positive struggle is the result; for, the prohibition is to be secured by abstention from the prohibited act."

प्रतिषेधेष्वकर्मत्वात् क्रिया स्यात् प्रतिषिद्धानां विभक्तत्वादकर्म्मणाम् ।

(2) This objection is answered thus in the other Sutra: "If effect be given to the Shastra, man is benefited: when Shastra is divorced from its object then it becomes a case of transgression of the law."

शास्त्राणांत्वर्थवत्वेन पुरुषार्थौ विधीयते तयोरसमवायित्वात्तादर्थ्ये विध्यति क्रमः ।

The following translation of Dr. Thibaut's Laugakshi Bhashkara's explanation of the Kalanja maxim and of a Pratishedha in the matter of condemnatory prohibitions, will explain the subject better:—

Laugakshi Bhashkara's explanation

"By prohibition (*Nishedha*) we understand turning off man (from some action), for the purpose of sentences of prohibition lies exclusively in their effecting (man's) turning away from actions which would be cause of some disadvantage. The details are as follows. In the same manner as an injunction conveying an instigation in order to give effect to its instigatory power intimates that the thing enjoined, for instance, the sacrifice, is the instrument for obtaining some desired result and thereby instigates the person towards it, in the same manner a prohibitory passage, as for instance, "he is not to eat *kalanja*" conveying the idea of turning off (from some action) in order to give effect to its power of

(*a*) The classification as well as the treatment has been very gratefully adapted from K. L. Sarkar's learned treatise 317-19.

turning off, intimates that the thing prohibited, as for instance, the eating of *kalanja*, is the instrument of bringing about some highly undesirable result and thereby turns man off from it. If it is now asked how a prohibitory sentence conveys the idea of turning off from some thing, we answer as follows. The sense of the word "not" is not connected with the sense of the root (of the verb in the prohibitory passage) ; for although the two words stand in immediate proximity the sense of the root presents itself as standing in subordinate relation to the actual creative energy (*Arthibhabana*) which is expressed by the suffix (of words like '*Bhakshayet*'). For something which presents itself as standing in subordinate relation to one thing cannot be connected with something else. Otherwise, in the sentence "bring the king's man" (lit. the king-man, *rajapurusha*) the king himself would enter into relation with the action (while in reality the king only stands in relation to his servant, the latter in his turn being the object of the action expressed by 'bring'."

Laugakshi Bhashkara, taking the prohibitory text "One is not to eat *Kalanja*" (*Na kalanjam bhakshayet*), explains the idiomatic force of the phrase (*Na bhakshayet*). The author explains that the suffix '*yet*' means '*shall*' and that the negative particle '*not*' is to be taken as attached to the suffix '*yet*' (*shall*), and not to the idea of *Kalanja* eating. For if it be taken as attached to the latter idea, then the sentence might mean, 'you shall eat but not *Kalanja*.' In this case there would be no prohibition. So he labours to demonstrate that the gist of the sentence is '*shall not*,' and therefore the object of it is to turn off from eating *Kalanja*. This may appear to be making a hair-splitting distinction, but it is of importance from the Mimansa point of view, as will presently appear. The explanation of Nishedha Vidhi becomes more clear from Jaimini's Sutra of the Kalanja maxim.

The objector says, "In a case of prohibition, mentally you entertain the idea of the action prohibited; for, you have to discriminate between the prohibited act and the negation of that act."

The objector means to say, 'what is the good of a prohibition when it invites the imagination to gloat over the action prohibited?' The author answers, "When an act is enjoined by the Shastra, it is for the purpose of the good of a person; if the good object be divorced from the meaning of the Shastra, then it becomes a case of transgressing it." [Jaimini VI. ii. 20]

The meaning is this :—

In a case of prohibition you must take it that not only is the particular external act prohibited, but also the very intention of it which makes the act evil. Roughly speaking, the principle laid down

can be enunciated as follows :

In a case of prohibition one should not abstain from the very idea of the act prohibited, and there ought to be no evasion of the Vidhi in any way.

Thus this class of Nishedha Vidhis is to be interpreted most comprehensively. If the thing be prohibited, it cannot be used even as a substitute for another thing." **प्रतिषिद्धद्रव्यस्य प्रतिनिधित्वाभावः ।**

[Jaimini VI. iii. 6.]

In fact, this broader interpretation of the Nishedha Vidhis has been carried so far that when a thing is prohibited, if it be transformed by combination with another thing into a new substance, even that new substance is not permitted to be used. This is supported by the black-kidney-bean maxim which is referred to both by Jimutavahana and Vijnaneshwara.

It may be argued that no reason is assigned why Pratishedha Vidhis of this character should be so broadly construed. But you should remember that the Nishedha Vidhi dealt with by the Mimansakas relates generally to *Purusha Dharma* (duties of a religious and moral character). The word *Purushartha* is expressly mentioned in Sec. 20, Chapter II, Book VI as its explanation. In fact, it has been explained by later writers that Pratishedha is generally directed against some particular vicious tendencies in men. In such a view of the Pratishedha, the principle of construing it comprehensively cannot be said to be improper.

'*Na hinsyeta*' **न हिंस्येत ।** (one should not injure another), '*Nanirtam vadeta*' **नानृतं वदेत ।** are examples of Nishedha Vidhis as given in the Vidhi Rasayana, page 123, Benares series. *Na kalanjam bhakshayet* **न कलञ्जं भक्षयेत्** (do not eat *Kalanja*) is also a Nishedha Vidhi (*a*).

59. *The Shodsin-cup maxim*: **षोऽशिन न्यायः**

"Where one and the same thing is once enjoined and then prohibited, this is a case of direct conflict, and accordingly not reconcilable." Jaimini X. viii. 3].

नाति रात्रे गृह्णाति षोऽशिनमित्यादि निषेधस्यविकल्प रूपताधिकरणम् ।

Shodsin maxim explained.

"The Shodsin maxim treats of a conflict not between a condemnatory prohibition as in the Kalanja maxim and some thing opposed to it, but as between a prohibition, as recognized by recent writers, of the essential element of some definite positive proposition. For instance, thete is the proposition; 'Use the *Shodsin* vessel at the dead of night.'

(*a*) K. L. Sarkar-Mimansa Rules of Interpretation 320-24.

Against this, there is the text, 'Do not use the *Shodsin* vessel at the dead of night.' This is a case of direct conflict, and there cannot be any attempt to reconcile the two. In such a case, option to follow one or the other rule is the only course left. But, if against the proposition 'Use the *Shodsin* vessel at the dead of night' you have the proposition, 'Do not use the Shodsin vessel at the dead of night during a new moon time,' this will not be a contradiction, but the second proposition will be read as a Paryudasa (exception), which does not affect the essence of the first proposition."

60. *The Dvayo pranayanti maxim:* द्वयोः प्रणयन्ति न्यायः

"The same text should not be once taken as a case of Paryudasa (mere exception), and again as a case of Pratishedha (prohibition proper." [Jaimini VII. iii. 9.]

Maxim explained.

This maxim lays down the simple principle that one should not blow hot and cold at the same time. The maxim originated from the following texts relating to the four-monthly Yagya which is a *Vikriti* (development) of the *Darsha-paurnamasi* and not of the *Shaumika Yaga,* as some opponents (*Purvapakshinas*) thought:

(1) "*Upa atra vapanti.*' उपात्र वपन्ति ।

"In this (four-monthly Yagya) the northern altar is to be established."

(2) "*Na vaishvadeve Uttarvedum upakiranti na Sunasherye.*" न वैश्वदेवे उत्तरवेदिमुपाकिरन्ति न शुनाशीर्ये ।

"The northern altar is not to be established either in the *Vaishwadeva* quarter or the *Sunasherye* quarter of the Yagya."

(3) *Uroo va etau yajnasya yat varuna-praghasah Shadhwaiti Dvayo pranayanti.*" उरु वा एतौ यज्ञस्य यत् वरुणप्रघासः शाकश्वेति द्वयोः प्रणयन्ति

"The two mainstays (legs) of the Yagya are the *Varuna-praghasha* and the *Shakdhwaiti.* The two must have fire kindled on them."

The four-monthly Yagya consists of four sections. The first is *Vaishwadeva,* the second is *Varuna pradhasha,* the third is *Shakadhwaiti* and the fourth is *Sunasherye,* each forming a quarter of the whole ceremony.

The first text lays down the general rule that the northern altar, which is inevitably connected with fire-kindling, should be established in the Yagya. The second text lays down that the northern altar is not to be established in the first and last quarters of the Yagya *viz.,* in *Vaishwadeva* and *Sunasherye.* The third text, after explaining the

importance of the second and the third quarters (*Varuna Praghasha* and *Shakadhwanti*), lays down that the fire kindling should take place in the two.

Jaimini construes the three texts as follows :

The first text is a general rule (*Samanya Vidhi*). The second is an exception to it. The third is an Arthavada (reciting clause) which shows the reason why the second and third are not subjected to any exception in respect of fire-kindling.

The above construction reconciles the three texts and does not introduce any conflict such as would result in an option (*Vikalpa*).

But the opponents would not construe the texts in that way. They argue as follows :

We concede that the first text is a general Vidhi, and that the second is a special negative Vidhi by way of an exception. But the exception is as regards the northern altar and not as to the kindling of fire.

This being the case 'we would' they proceed to say, 'hold that the clause 'Dvayo-pranayanti' which occurs in the third text is intended to apply to the first and the last quarters (the *Vaishwadeva* and the *Sunasherye*). For, these are in need of such a clause to enable fire-kindling, as the provision prohibiting the northern altar in respect to them raises a difficulty in the way of fire-kindling whereas with regard to the second and the third texts, the clause would be a superfluity, the fire-kindling in these two being already provided by the general rule (*Upa atra vapanti*).'

The opponents thus make out the case of kindling of fire in the *Vaishwadeva* and the *Sunasherye*. But on what is it to be kindled ? So they are yet in need of the altar. This they make out in the following way. They say that there is a virtual conflict between the second text and the first, in as much as the first text by the clause '*atra upavapanti*' prescribes the kindling of fire on the northern altar in all the four ceremonies and the second text prohibits the northern altar in two of the ceremonies. They proceed to hold that by reason of this contradiction, an option is given, and they should take advantage of this option to make the northern altar in *Vaishwadeva* and *Sunashiri* just as in the other two.

The Mimansakas say that this argument constitutes (*Vidhi vaishamya*) inconsistency of legal rules.

The Mimansakas expose the fallacy as follows :

"They say that the opponents once read the first text (the general Vidhi) as subject to the exception contained in the second text. They read it as an absolute rule side by side with the second text which is

read equally as an absolute rule creating contradiction. They get the fire by the first view. This is bad and cannot be tolerated.

"The tussle between Srikara Misra and Jimutavahana as exhibited by the latter, very largely illustrates how Mimansa principles are respected and applied by Hindu jurists. The two authors fight over the construction of certain texts of Yajnavalkya regarding the right of succession as between united and separated, and as between uterine brothers and half-brothers: With reference to the text, 'The united brother succeeds' and the text 'The uterine brother succeeds,' Srikara Misra argues that to make out from these the proposition that a united half-brother takes equally with a separated uterine brother, one is to incur the fault of the Dvayo-pranayanti maxim. For, in order to support this proposition, he must once read either of the two texts as simply giving the right of succession, and again as giving a comparatively preferential right. By the one reading you get the right of a united half-brother and a separated uterine brother to succeed, and by the other reading you get the equality of their position as they would both occupy the same preferential position with reference to a separated half-brother. Srikara maintains that such a double reading is wrong. Jimutavahana, however, supports the proposition by a variety of arguments, as will be seen later on."

The effect of this maxim may be summarised thus. A positive and a negative text may either be in conflict with each other or not. If there are reasons to believe that they are in conflict, the view must be stuck to, otherwise not, and one should not be allowed to shift one's position at pleasure. There is no doubt that the conflict occurs in cases like that of the Shodsin maxim. There is no conflict when the negative text is a Paryudasa. Also, there is no conflict, when by the force of the Kalanja maxim, a practice standing in the way of a condemnatory prohibition must be swept off.

A practice in opposition to a Pratishedha, is only saved where there is clear ground to hold, that the Pratishedha does not extend to the essence of the practice which is apparently in conflict with it. Such a case is discussed by Raghunandana. He takes up the rules sanctioning the immolation of animals for purposes of sacrifice and raises the objection that these rules must be treated as nullity by virtue of the general negative Vidhi condemning the destruction of animal life—'*Na hinsyeta.*' He gets out of this objection by showing that the word '*hinsyeta*' does not include in its meaning killing by way of sacrifice.

But such an argument cannot hold good in the case of the general negative Vidhi '*Nanirtam vadeta*' (do not speak falsehood) with

reference to the observation of Manu, wherein he says that a man may tell a lie to save the life of a Brahmin. If '*Nanirtam vadeta*' be a general prohibition of telling lies on the part of those who have the privilege of performing Yajnas, then it cannot be argued that the telling of a lie to save a life is not within the general negative Vidhi—'Do not speak a falsehood."

So the observation of Manu mentioned above must be taken as not having the force of a Vidhi, but as merely indicating that the violation of the general Vidhi may in the case referred to be excused (*b*).

61. *The Pratishidha-dravya maxim :* प्रतिषिद्धद्रव्य न्याय:

"That which is forbidden by a general condemnatory Vidhi cannot be used in any shape, for instance, even as a substitute for another thing." प्रतिषिद्ध द्रव्यस्यप्रतिनिधित्वाभाव न्यायः [Jaimini VI. iii. 6]

Class III. Group B

Maxims regarding PARYUDASA, qualifying and qualified prohibition *etc.*

62. *The Pradeshanarabhaya maxim :* प्रदेशानारभ्य न्यायः

Four maxims regarding Paryudasa.

"A prohibition that merely displaces a part of the descriptive clause of a Vidhi text, is merely a qualifying prohibition of the nature of an exception." [Jaimini X. viii. 7] :

प्रदेशानारभ्यविधानयोर्निषेधस्य पर्युदासताधिकरणम्

63. *Na tau pasau karoti maxim :* न तौ पशौ करोती न्यायः

"When a negative clause merely declares that a certain thing does occur in an Utpatti Vidhi, such a clause is to be taken not even as a Paryudasa but as an Arthavada." [Jaimini X. viii 2]

न तौ पशौ करोतीत्यादिनिषेधस्यार्थवादताधिकरणम् ।

64. *The Sanyoga-prithaka maxim :* संयोग पृथक् न्यायः

The same thing may be used to serve a subordinate purpose, and again to serve a principal purpose.

65. *The Abhimarshana maxim:* अभिमर्षण न्यायः [Jaimini III. vii. 4] is also to the same effect.

Explanation and detailed treatment of the above maxims.

Paryudasa is explained by Laughakshi Bhashkara thus :—

"Where there is however an obstacle in the way of the word 'not' being connected with what is expressed by the verbal suffix, it is connected exclusively with what is expressed by the root itself. Such obstacles are of two kinds : (1) The beginning with the phrase, such as

(*b*) K. L. Sarkar-Mimansa Rules of Interpretation p. 325-29.

"his vowed observances are as follows," and (2) the contingent probability of a Vikalpa (option)."

" An example of the former kind is, for instance, found in the following passage, 'he is not to look at the rising Sun', as this sentence is read after a commencement has been made with the words 'his vowed observances are as follows'."

Laugakshibhashkara's view, as expressed above, is that in a Paryudasa the prohibition is not in the form of "shall not intend the doing of the thing but only in the nature of a direction that the thing should not be done under particular circumstances." Further he intimates that where by construing the prohibition as absolute, one would be forced to the use of an option, the prohibition should be construed, if possible, as a Paryudasa only. For instance, in the case of the text, "he is not to look at the rising Sun"; as this is stated to be in fulfilment of a vow, it is a self-made rule applicable only when the vow is made. Therefore it is a Paryudasa.

In the first Adhikarana of Ch. VIII, Book X, which has been called Pradeshanarambha maxim, Jaimini explains Paryudasa as follows :—

"Where the leading clause of a passage contains a general direction for the performance of a certain act there is a prohibition of it under certain circumstances, the prohibition is to be taken as a legitimate exception or *proviso* (Paryudasa)." [Jaimini X. viii. 1].

प्रतिषेधः प्रदेशेऽनारभ्यविधाने च प्राप्तप्रतिषिद्धत्वाद्विकल्पः स्यात् ॥

The English principles of interpretation on the subject, as given by Maxwell are as follows : " An author must be supposed to be consistent with himself; and, therefore, if in one place he has expressed his mind clearly, it ought to be presumed that he is still of the same mind in another place, unless it clearly appears that he has changed it. In this respect, the work of the legislature is treated in the same manner as that of other authors; and the language of every enactment must be so construed, as far as possible, as to be consistent with every other which it does not in express terms modify or repeal. The law, therefore, will not allow the revocation or alteration of a statute by construction when the words may have their proper operation without it. But it is impossible *to reconcile contradictions*, if the provisions of a later Act are so inconsistent with, or repugnant to, those of an earlier Act that the two cannot stand together, the earlier stands impliedly repealed by the later." (a)

The principles as regards such a conflict are essentially the same in the Mimansa system as in the English system. But the

diversity of the contents of the Smriti which is also presumed to emanate from the same source as the statute law, is very great, and the apparent incongruities among various passages are far more numerous than in the case of statute laws. So Mimansa rules on the subject are numerous. Jaimini's rules as to the reconciliation of a seeming conflict by taking a prohibitory clause as an Arthavada and in the case of a seeming conflict between an Apurva Vidhi and a prohibitory clause consistent with it—are very helpful in connection with the interpretation of the Vyavahara law.

In this respect the difference between a Paryudasa and a Pratishedha is of great importance. Owing to the fact that such difference has not been properly appreciated by certain courts, they have arrived at erroneous conclusions, as, for instance, when they have held that if a person having inherited property, subsequently incurs one or the other of the disabilities recognised by law, he is not to be divested of the property already inherited by him. There would have occurred no difficulty if the fact of the rule of exclusion from inheritance being a Paryudasa and not a Pratishedha had been thoroughly understood and the rules of exclusion being Paryudasa could not possibly extend beyond the time when the succession opened, as they refer to that time only. On the other hand, if these rules had been Pratishedha, then, by the Kalanja maxim they would have had a far reaching effect, and in that case valid arguments would have been necessary to secure a liberal working of the law. Again, the rule that the children of disqualified persons are not debarred from inheriting, is also easily explained by the fact that the rules are merely Paryudasa.

"Mimansa writers raise the following question with regard to an exception (Paryudasa). If a general negative Vidhi be violated, there is a penance for the violation; for, to observe the negative Vidhi is a duty. But is a violation of an exception also to be visited with a penance? Some answer, no. Because to observe an exception is by itself no duty. Take for instance, the text discussed by Raghunandana,—"The Parvana Sraddha must be performed during the new moon *but not in the night*. Here the words in italics form an exception. Suppose a man performs the Sraddha during the new moon but in the night. The effect is that he gets no benefit from the performance of the Sraddha. But he commits no positive sin. He is only guilty of the omission of performing the general Vidhi. Raghunandana, however, says that in some cases the violation of a Paryudasa (exception) is visited with a penance, as if it were a positive independent Vidhi." (*a*)

(*a*) K. L. Sarkar-Mimansa Rules of Interpretation p. 233-34.

Class III, Group C

Maxims relating to alternative clauses and to the adjustment of general and particular Vidhis:

66. *Apachheda* (losing hold) *maxim*: अपच्छेद न्यायः ।

Two maxims relating to alternative clauses, etc.

"If a certain consequence is attached to an event, failing which another consequence is attached to another event, in such a case both the events occur simultaneously the consequence is optional." [Jaimini VI. 17.]

If of the two alternative events, both happen one after the other, then that which happens last, is given effect to ignoring that which happens first.

Losing hold maxim explained.

When two different effects are respectively attached to two events alternately, if both happen simultaneously, either effect may be attached, but if one event follows the other, the result will conform to the event that happens last. This rule is similar to the Roman rule that out of the two repugnant clauses of a will, the last shall prevail. The principle is illustrated thus :—

"In the Yotishtoma Yagya, the priests come out of the hall one behind the other, each holding the backrobe (*Kachha*) of the person going before. If the *Udgata* loses hold, the Yagya must be finished without Dakshina, and a fresh Yagya must be performed in which the presents intended to be given in the Yagya, ought to be given. If the *Pratihota* loses hold, the sacrificer must make a gift of all his possessions.

"With regard to the texts as above mentioned two difficult contingencies may arise :—

(1) If both the priests, the *Udgata* and the *Pratihota* lose hold simultaneously, what is to be done ?

(2) Suppose again that both lose hold, but one after the other, whose failure is to settle the consequence ?

"With regard to the first case, the Adhikarana consisting of Sutras 51, 52 and 53 decides, that the two failures having taken place simultaneously, the case becomes one of direct conflict, and therefore, option results. For, the consequences of the failure of the one and that of the failure of the other are contrary to each other and they cannot be reconciled. Therefore, if both the *Udgata* and *Pratihota* lose hold simultaneously then either a fresh Yagya is to be performed and only the intended presents made, or the sacrificer is to give away all that he has. As regards the case of one losing hold after the other, the Adhikarana in Sutra 54 decides, that the sacrificer will have to make a fresh sacrifice with the intended presents, if the *Udgata* lose hold last, and he will have to give away all his properties if the *Pratihota* lose hold

last. In other words, the result will be in accordance with what happens last. Savara Swami gives elaborate reasons for this conclusion.

"The Sutra on the point is very generally worded. It runs as follows :—

"If one precedes and another follows, the preceding becomes weaker as in nature." **पौर्वापर्ये पूर्वदौर्बल्यं प्रकृतिवत्** । [Jaimini IV. v. 54].

"Evidently, it is with reference to the above Sutra that the following rule has been enunciated by Dr. Siromani :

"When in order to establish any particular proposition, several reasons are given in successive clauses, each successive reason being preceded by such words, as *kincha, yadva, etc.*, then the reason last given is to be accepted as the opinion of the author."

Sree Bhatta Sankara also states that if two successive clauses are in conflict, that which precedes is barred by that which succeeds. This he places among the rules of *Praptabadha* (exclusion by necessary implication).

This principle is analogous to the following principle of the English Law of Interpretation :

"And if the provisions of a later Act are so inconsistent with, or repugnant to, those of an earlier Act that the two cannot stand together, the earlier stands impliedly repealed by the later." (*x*)

67. Maxim of **the general and the particular** **छागस्येवाग्नीषोमीयपशुताधिकरणम्** । [Jaimini VI. viii. 10]. When there are two rules on the same subject, one general and the other particular, the particular rule prevails.

Explanation of the maxim.

A Sruti is to the effect that the *Agnisomiya* animal shall be sacrificed. The objector insists that as the injunction leaves the question open, one can sacrifice any animal, *i. e.*, any quadruped. But the author argues, at great length, to establish that this general injunction is purposely limited by the specific Mantra pointing to the goat as the proper animal for sacrifice. So only a goat is to be sacrificed.

It is noteworthy that both the rules are positive in this maxim. Any express maxim dealing with the case of a general negative rule and a particular negative rule or any exception to a negative Vidhi is not found. The only similar topic which touches these two questions is the topic of the *Dan pashu* maxim, of which the particular negative Vidhi prohibiting the use of two *Ajyabhagas* in the *Pashu Yagya* is directed to be taken as an Arthavada, as such *Ajyabhagas* would not be allowable in the *Yagya* even without this prohibition. The particular

(*x*) K. L. Sarkar-Mimansa Rules of Interpretation pp. 234-36.

negative Vidhi merges in the general negative Vidhi, if any, and thus becomes a mere Arthavada.

Class III. Group D

Maxims relating to the equitable application of Smriti texts (x):

These are not strictly speaking maxims, but rules laid down by the Smriti writers.

68. "*Smriti is of greater authority than principles of equity.*" (Yajnavalkya Ch. II. 21) **अर्थशास्त्रात्तु बलवद्धर्म्मशास्त्रमिति स्थितिः**

69. "*If possible the principles of equity should be reconciled with the text law.*"

70. "*In the case of a conflict between the text law and the principles of equity, the latter must be discarded and the former followed.* [Yajnavalkya I. 39] **यत्र विप्रतिपत्तिः स्याद्धर्म्मशास्त्रार्थशास्त्रयोः**

अर्थशास्त्रोक्तमुत्सृज्य धर्म्मशास्त्रोक्तमाचरेत् ।

The term Artha Shastra has been used in the sense of 'rules of relief' which ultimately means 'rules of equitable relief.' The considerations of relief to be granted are matters of equity and are usually known as Laukika Shastra (popular principle) or as Laukika Nyayas (popular maxims).

Relative position of Smriti law and rules of equity.

Vrihaspati says: Decision should not be based only on the Shastras. By an unreasonable judgment there is loss of Dharma."

केवलं शास्त्रमाश्रित्य न कर्त्तव्यो हि निर्णयः ।

युक्तिहीने विचारे तु धर्म्महानिः प्रजायते ।

It contemplates Shastras which are of the nature of quasi-law or doubtful meaning but not positive commands which permit of no ambiguity. Jaimini also holds that when a Shastra is of a doubtful character, it must be interpreted in the light of reason.

Then as regards conflict between the Smriti texts themselves, several principles have been suggested; Yajnavalkya (II. 21) says: "When two Smritis differ, that which follows equity as practised by the people of old, should prevail. **स्मृत्योर्विरोधे न्यायस्तु बलवान् व्यवहारतः ।**

Narada says: "In cases of conflict of Smritis, decision should be based on reason (as embodied in custom; as custom is powerful and overrides the sacred law."

धर्म्मशास्त्रविरोधे तु युक्तियुक्तो विधिः स्मृतः ।
व्यवहारो हि बलवान् धर्म्मस्ते नावहीयते ॥

(x) See p. 42. of Book I of this work.

Vrihaspati says :

"The first rank (among legislators) belongs to Manu because he had embodied the essence of the Vedas in his work, that Smriti (or text of law) which is opposed to the tenor of the laws of Manu is not approved."

वेदार्थोपनिबन्धत्वात् प्रधान्यं हि मनोः स्मृतम् ।
मन्वर्थविपरीता या सा स्मृतिः न प्रशस्यते ॥

The superiority of Manu's Smriti is due to the fact that it is the oldest. But time does introduce change. This is evident from the text of Parasara : 'The law of Manu is authoritative in the *Satya Yuga*, the law of *Gautama* in the *Treta*, in the *Dwapara Sankha Likheta*, and in the *Kali* the law of *Parasara*."

कृते तु मानवा धर्म्मास्त्रेतायां गौतमाः स्मृताः ।
द्वापरे शङ्खलिखिताः कलौ पाराशरा स्मृताः ॥

Sri Bhatta Sankara in his learned treatise—Mimansa Bala Prakasha treats the subject Kalpa Vidhis (constructive Vidhis) in detail. They are nothing but Vidhis presumed by reason. They have been first divided into Kalpya Vidhis proper and Kalpya Nishedha, then he divides the latter into seven classes such, as, Achara Kalpya and Arthavada'Kalpya, *etc.* Kalpya Pratishedha can be illustrated by the text: "Let not persons of the same Gotra be married." This rule is not to be found in any express text but is an extension of a principle contained in certain texts." The prohibition of *Parana* (breaking fast) at the time of *Hari vasara* is an instance of Achara Kalpya Pratishedha.

The digest writers in reconciling conflicting texts generally make use of equitable and reasonable considerations and often arrive at a conclusion in the nature of a compromise, in the shape of constructive Vidhi. For example, the Mitakshara deduces the rule that a widow inherits her husband's property, provided he was not living jointly with his brothers at the time of his death, from a number of texts some of which clearly asserted the widow's right of succession unconditionally; some virtually negative her right altogether; while a few indicate that she is to succeed after her husband's brothers. The Dayabhaga tries to reconcile the texts to a great extent by appealing to Shastric reason and sense, and practically adopts those texts which coincide with reason. It does not at the same time discard unceremoniously the texts which contradict those approved by it. A particular reading of these has been suggested with some grammatical liberty of construction. Manu shows that the word 'his,' *i. e.*, 'husband' is understood before 'entire share' and refutes the compromise arrived at by the Mitakshara, that the widow takes only if her husband was not joint with his brothers (*a*).

(*a*) K. L. Sarkar Mimansa Rules of Interpretation p. 340.

SECTION 5. POPULAR MAXIMS

Jaimini's maxims of interpretation are of a great binding force. Certain principles of interpretation of common knowledge or the popular maxims (*Laukika Nyayas*) are not of the same authoritative force but many of them are quite authentic. These maxims are nothing but expressions of common sense which may be correctly termed as "*the condensed good sense of the nation.*" The origin of these *Laukika Nyayas* which are abundantly found in the ancient and modern Sanskrit literature can be traced to various sources. They are often found in the striking passages of some ancient poets, *e.g.*, the *Panka-prakshalana* maxim **पङ्क प्रक्षालन न्यायः**—'Better to avoid the mud than to wash it off.' Some of them originated from popular stories while in other cases the details of the story giving rise to them, cannot be traced with certainty. Some of them are based on facts, real or supposed, *e.g.*, the maxims of the Lion's look **सिंहावलोक न्यायः** and the crow's eyeball **काकाक्षि गोलक न्यायः** Others show the sympathies and antipathies of the people of the time, and not a few of them are expressions of ironical sarcasm. Only some of them which have some bearing on legal principles will be of help to us. No systematic treatise on these has been prepared except that of 'Laukika Nyaya Ratnakara' along with its abridgement 'Laukika Nyaya.' These books give no references. Colonel G. A. Jacob has done really useful work in connection with this subject and has published them in two booklets (*Laukika Nyayanjali* or the Handful of Popular Maxims). Popular maxims which are in the form of abstract propositions are thus the condensed expressions of some natural or moral facts or laws embodied in sayings which were prevalent among the people concerned. But mostly they are found in the form of facts or as an illustration of some kind of expediency. Some of the popular maxims as collected and given by the learned Tagore Law Professor K. L. Sarkar (p. 354) are given below:

Class IV

71. **सकृत् कृते कृतः शास्त्रार्थः** The maxim that *if a thing is once done, the requirement of Shastra in that respect is fulfilled.* It is a generalisation of Jaimini's maxims regarding Tantra and Prasanga and is of very great practical importance in applying the texts of the Shastra. It is very frequently referred to in the works of commentators on the Smritis.

72. **सकृदुच्चरितः शब्दः सकृदेवार्थं गमयति।** In the same passage *a word occurring once cannot be taken both in its primary and secondary sense.* The Dayabhaga has referred to it in several places

and this maxim also is of vital importance to the interpretation of law.

73. शब्दाधिक्यादर्थाधिक्यम् । *More words, more meaning.* Kashiram in his commentary on Shuddhitattwa and Raghunandana in Udvahatattwa have made use of this maxim, which is the keynote of the principle of literal construction.

74. यावद्वचनं वाचनिकं The maxim of *understanding up to the limit of the power of an expression.* The principle of literal construction has been emphasised by this maxim by the assertion that one cannot go beyond the power of words. It occurs twice in Bhamati, pp. 710, 742. Anandagiri also quotes it in his comment on IV. iii. 4.

75. शते पञ्चाशत् । The maxim of *fifty in a hundred*; *the greater includes the less* [See Savara VI. i. 43]. It is equivalent to the Latin maxim *buane magus continet in se minus.* This maxim appears to be a provoking truism and it has been so put in this form to make it more attractive.

76. यः कारयति सकरोत्ये व । The maxim that *causing (a thing) to be done is to do (it).* It means that he who causes a thing to be done by another is the real doer of it. Its equivalent Latin maxim is "*Qui facit per alium facit per se*" Anandagiri has made use of this maxim on Brahmasutra Bhashya I. 2. 21.

77. रुढिर्योगमपहरति । The maxim that *current sense steals away that which is derived from the root*; or, in the words of Jacob: "*Popular usage overpowers etymological meaning.*" This maxim is included in Jaiminis *Padartha Prabalya maxim* and has been referred to in various places such as Vivaranaprameyasangraha (1. 3. pp. 134, 135), Panchapadikavivarana (pp. 132-3), Vedantakalpataru (p. 207, and Anandagiri on Brahmasutra Bhashya (1. 3. 42. Its Latin equivalent is "*Optimus interpres usus*"—Usage is the best interpreter of things. This Roman counterpart is well familiar to the lawyers.

78. पक्षाविनी प्रतिज्ञाहि प्रतिज्ञातं न साधयेत् । *Definition alone is no proof.* It means that bare assertion of a matter is no proof of the matter asserted. This is found in Sarvadarshanasamgraha. It is an universal maxim.

79. सम्भवत्येकवाक्यत्वे वाक्यभेदो न चेष्यते इति न्यायः । *Do not make two sentences or ideas, when one is possible.* It shows how popular maxim agrees with Jaimini's maxim.

80. कांस्यभोजी न्याय : The maxim of *eating from the brazen vessel.* Jaimini refers this maxim in XII. ii. 35 where he says: ' It

there be several conditions not inconsistent with each other, then (the condition) should be adjusted so as not to interfere with the condition attaching to the inferior in position, just as in the case of the eating from the brazen plate. This maxim 'eating from the brazen plate' is explained by Savara as meaning that, where there are the student and the teacher to take food, the former with a pre-existing vow to take his food from brazen plates only, then the latter, for the leavings of food the student is bound to partake, must accommodate the student by taking his food served in a brazen plate even though it may not be quite convenient to him. The importance of this maxim appears to be that where it is possible, inconsistencies should be reconciled.

81. देहलीदीप न्यायः The maxim of *the lamp on the threshold.* A lamp so placed gives light both inside and outside the house; and the maxim is applied to something which fulfils a two-fold purpose. Savara in his Bhashya on Jaimini XIII. I 3 makes use of this Nyaya, though he does not actually mention the word *Dehalee.*

82. फलवत् सन्निधावफलं तदङ्गम्। The maxim of *the resultless being subordinate to that which has a result* The principle that whatever has no result of its own, but is mentioned in connection with something else which has such a result, is subordinate to the latter. This is Dr. Thibaut's rendering of the Nyaya as it occurs in Brahmasutra-bhashya II. i. 14 (p 443), and he explains it in a foot-note as follows:

" A Mimansa principle, a sacrificial act, for instance, is independent when a special result is assigned to it by the sacred texts; an act which is enjoined without such a specification is merely auxiliary to another act." (See also Savara IV. iv. 19)

83. ब्राह्मण परिव्राजक न्यायः। The maxim of *the Brahmana and the holy traveller.* In such a sentence as, 'the feasting of the Brahmanas and holy travellers,' the separate mention of the latter who are really included in the former term, merely emphasises their position as a special section of the general body. It also appears in Kumarila Bhatta's Tantravartika pp. 423, 590.

84. काकदन्त परीक्षा न्यायः। The maxim of *the examination of a crow's teeth.* It applies to any useless and manifestly fruitless enquiry. It occurs in Sankara's Bhashya on Katha Upanishada I. 25. It is also found in Jaiminiya Nyayamalavistara 4. I. 1.

85. गोबलीवर्द न्यायः। The maxim of *the cattle and the bull.* It is to the same effect as the maxim of the Brahmana and the holy traveller. It means that where two words are joined together meaning

almost the same thing, the second word is intended to emphasise the meaning of the first. Kulluka refers to this maxim in his exposition of Manu VIII. 28, where six classes of women are enumerated as having a claim to the King's protection. अत्र चानेकशब्दोपादाने गोवलीवर्द्दन्यायेन पुनरुक्तिपरिहारः।

86. नष्टाश्वदग्धरथन्यायः The maxim of the *lost horses and burnt chariot.* It is based on the story of two men travelling in their respective chariots, and one of them losing his horses and the other having his chariot burnt, through the outbreak of a fire in the village in which they were putting up for the night; the horses that were left, were harnessed to the remaining chariot and the two men pursued their journey together. Its teaching is *union for mutual advantage.* This very old story is referred to in Kumarila Bhatta's Tantravartika pp. 15, 709, 832.

87. सुन्दोपसुन्द न्यायः। The maxim of the *two monsters.* It implies that where two contradictory facts are equally strong, they neutralise one another. In this sense it has been applied in Sankhya Tattwa Kaumudi. Raghunath asserts that this maxim would apply when the things in opposition are of equal strength, but when they are of unequal strength and the weaker is to go to the wall, then the Matsya Nyaya is employed. The story of two monster brothers, Sunda and Upasunda who, quarrelling over the heavenly woman Tilottama, destroyed each other, gives this maxim its name. Its Latin equivalent is, *Allegans contraria nonest audiendus.* He is not to be heard who alleges things contradictory to each other.

88. मत्स्य न्यायः। The maxim of *the larger fish eating the smaller.* It means the weaker goes to the wall, just as the large fish eats the small. Kulluka, in his commentary Manu Sanhita on Manu VII. 20 अत्र वलवन्तः दुर्ब्बलान् हिंस्युरिति मत्स्य न्यायः पवर्त्स्यादित्युक्तम्। has made use of this maxim.

89. न यद्गिरिश्रृङ्गमारुह्यगृह्यते तदप्रत्यक्षम्। The maxim that *a thing is not to be taken as imperceptible because it is perceived with great difficulty.* It is referred to in Tantravartika p. 6 and in Nyayamanjari p 422.

90 यदश्वेन ह्रतंपुरा तत्पश्चात् गर्द्दभः प्रान्तं केनोपायेन शक्नुयात्। The maxim that *one riding on a horse cannot be overtaken by one riding on an ass.* Kumarila Bhatta refers it to ridicule the claims of those resting on the authority of the Smriti to match those who are grounded on the authority of the Sruti [Tantravartika p. 730, and Nyayamanjari p. 262].

91. ऊपजीव्यविरोधस्यायुक्तत्वम्। *Do not strike at your own existence.* Its true significance is: it is wrong to quarrel with that on

which one's livelihood depends. It is found in Paribhashendushekhara p. 85 which employs it to support the proposition that when one relies on a combination of two things as constituting ground in his favour, he cannot at the same time shut out a rule arising from that combination which will go against the ground taken by him.

92 अर्कमधु न्यायः । *Go not far if you find it at your hand.* This maxim says, "If you can find honey in the Arka plant which grows in your yard, no need of going into the mountains in quest of the bee-hives" It has been referred to by Savara in his commentary on Jaimini I. ii. 4 which has been quoted by Vachaspati Misra in Sankhyatattwa Kaumudi and by Sankara in his commentary on Vedanta Sutra III, iv. 3.

93. ऋजुमार्गेण सिध्यतोऽर्थस्य वक्रेण साधनयोग न्यायः । *When an object can be attained by following a straight path, what is the good of following a circuitous course?* Vachaspati Misra in his Nyayavartika-tatparyatika has used this maxim twice.

94. आम्रवण न्यायः । The maxim of *the mangotope* or the maxim —*what predominates, gives the name.*

A mango-tope means a grove in which mango trees abound, not that no other trees are to be found in it. This maxim finds an expression in Jaimini III. iii. 10 which means, in the case of Srutis, that which abounds, in a certain Veda is taken as belonging to that Veda.

95. एकमनुसन्धित्‌ सतोऽपरं प्रच्यवते इति न्यायः । *Join at one end, break at the other.* It means a case in which one cannot rely upon an argument without raising an equally strong objection. It has been used twice in Sarvadarsana samgraha.

96. करकण न्यायः । The maxim of *wristlet of the wrist.* It means that when a term by itself implies its relation to a certain thing, additional employment of the name of that thing must have some additional meaning; as for instance, the expression, the wristlet of the wrist, means that the person is acutally wearing it upon his wrist. Karika expresses it generically शब्दाधिक्यात्‌ अर्थाधिक्यम्‌ *Shabdhadhikyat Arthadhikyam.*

97. काकदध्युपघातक न्यायः । The maxim of *the cow and the curdled milk.* It means that looking to the purpose of a proposition, it must be taken in a general sense though expressed in particular words. It corresponds to Jaimini's Grahaikattwa Nyaya.

98. कैमुतिक न्यायः । The maxim of *what after.* It means that when

the more difficult of the two propositions is proved, the simpler one is to be taken as proved. The maxim of the loaf and the staff is to the same effect. The commentators of the Mimansa Sutras discuss this maxim in I. i. 32.

99. जलानयन न्यायः । The maxim of *fetching water.* It implies that when a principal purpose is expressed, all its subordinate incidents are included therein, just as when one says 'Fetch me water for drink,' it means 'Fetch for me a glass or other suitable vessel filled with water.' It corresponds to the Prasanga Nyaya of Mimansa.

100. दण्डापूप न्यायः । The maxim of *the staff and the cake.* It arose thus : a cake was placed upon a staff and left at the corner of a house. In the morning, the cake was missing, and it was found that parts of the staff had been bitten off, evidently by a rat. Under these circumstances, it must be presumed that the rat who bit off parts of the staff must have eaten up the cake. Jimutavahana has applied it in several places.

101. पङ्कप्रक्षालन न्यायः । *Prevention is better than cure.* Literally it means 'better not to touch the mud than to wash it off.' This maxim has been used in the Dayabhaga, Brahmasutra, Sankara Bhashya, Panchatantra and Mahabharata.

102. नहि दृष्टे अनुपपन्नं नाम इति न्यायः । *Where the reason of a thing is found by perception, it is not proper to seek for any other proof for it.* It is on this basis that Jaimini regards the Mantras to be mere Niyamas regarding tangible objects.

103. ब्राह्मणश्रमण न्यायः । The maxim of the *Brahmin Bandhu ascetic.* It implies that where a person is converted from one creed to another, but continues to retain the denomination of his former creed, such an expression should be used. It is quite clear that according to Hindu Law, conversion to Buddhism did not cause a forfeiture of the rights of a Brahmin as a citizen. As regards civil rights, no such forfeiture was caused [Abraham *v.* Abraham]. It is used by the authors of Kavya Prakasha and the Sahitya Darpana

104. यत्परःशब्दः स शब्दार्थः इति न्यायः । The maxim that *a word signifies the thing signified.* It means that the meaning of a word partakes of the character of the thing to represent which it is employed. In its wider sense it means that a work is authoritative on the subject it purports to treat, and not on any collateral subject. The instance, given by Vijnanbhikshu is, that Sankhya Sutras, the object of which is to show the means of relieving misery, have no authority regarding the subject of the Supreme Being.

105. यत्रोभयः समोदोषः नतत्रैकोऽनुयोज्य इति न्यायः। *Where both the opposing sides are equally objectionable or equally blameless, the go-by should be given to both of them.* In Mimansa where two Vidhis happen to be in conflict, there must be Vikalpa or option. The utility of this maxim is not so great in the Mimansa Darshana as in the Vedanta Darshana, for in the former the object is decision, in the latter elimination

106. शङ्खवेला न्यायः। The maxim of *the conchshell and the hour of the day.* This maxim is of equal importance to the subject of interpretation as to that of logical argument. Jaimini's principle of Krama (order of sequence) corresponds with this maxim. Raghunandana's application in Malamasatattwa illustrates its exegetic value. The meaning of the expression 'conch-shell and the hours of the day' is that, as the conch-shell is blown according to custom at certain hours of the day, these hours are indicated by the blowing of the conch-shell.

107. शिरोवेष्टनेन नासिकास्पर्श इति न्यायः। The maxim of *showing the nose by moving the hand round the back part of the head.* It implies that when an easy word and direct course are available, an indirect and far-fetched course should not be adopted. It corresponds to Arkamadhu Nayaya.

108. सन्निहितादपि व्यवहितं साकाङ्क्ष्य वलीय इति न्यायः। *Nearness of position is not nearness in sense.* This maxim signifies that it is not juxtaposition which determines the nearness of relation of clauses. Clauses though distantly situated may yet be connected by one verging to the other. This Naiyaik maxim is identical with the Mimansa maxim on the subject.

109. सन्निहित बुद्धिरन्तरङ्गमिति न्यायः। The maxim of '*nearer the better.*' It means where a construction with a nearer clause is as good as with a more distant clause, the nearer one should be preferred.

110. समूहावलम्बन न्यायः। *Take all of a group on an equal footing.* It means that when two or more substantives occur together, such as Ghatpata (the cup and the portrait), घटपट न्याय: one should not be taken as qualifying the other, but both as independent substantives. By this maxim it is directed to construe a compound word, as Dandwasamasa द्वन्द्व समासः where this is possible, rather than to construe it as any other Samasa.

111. सर्व्वविशेषेण साधारण इति न्यायः। The maxim *that which forms the quality of one thing may be the quality of other things.* For

example, Shivetashankha (the white conchshell), but the other things than a conch-shell may also be white. This maxim is practically identical with *Mithaasambandha Nyaya* of the Mimansa Sutras.

• 112. सर्व्वापेक्षा न्यायः। *When invited all must be equally attended to.* It means that where to a number of nominative clauses there is one common predicate, that predicate must be applied equally to all the clauses.

113. सावकाशनिरवकाशयोर्मध्ये निरवकाशः बलीयान् इति न्यायः। The maxim that *where there are two Vidhis one of a wide and vague scope, and the other definite and limited, the latter should prevail.* It is similar to Jaimini Samanya Vishesha Nyaya.

114. भूमिरधिक न्यायः। has been mentioned by Savara in VII. ii. 15 and IX ii. 13

115. शकुनि ग्राहकगति न्यायः। Shakuni-grahakagati Nyaya has been referred to by Savara in IX. i. 22.

116. शुष्केष्ट न्यायः। Shushkesti Nyaya has been mentioned by Savara in IX. ii. 17,

117. अर्द्धजरतीय न्यायः। The maxim of '*half and half*.' It arises from the story of the Brahmin who was eulogising his cow offered for sale, as being one of mature age, but who finding that that was not inviting to the purchaser, next day described it as being verily a young animal though old in spirit.

118. कृते कार्य्ये किं मुहुर्त्तप्रश्नेन इति न्यायः। The maxim *discussing the selection of an auspicious moment after the thing has already been done.*

119. अन्धस्येवान्धलग्नस्य विनिपातः पदे पदे। *If the blind lead the blind, both will fall into the ditch*

120. अजात पुत्रनामोत्कीर्त्तन न्यायः। *Proclaiming the name of a son before he is born.* Its English equivalent is 'counting your chickens before they are hatched.'

121. भिक्षुपादप्रसारण न्यायः। *The beggar planting his footing*; its English equivalent is 'give him an inch, he will take an ell.'

122. स्वाङ्गं स्वव्यधायकं न भवति। *One's own body does not hinder one.* What on the face of it constitutes an accessory to an idea should not be taken to contradict that idea.

123 स्थूणानिखनन न्यायः। *How to dig earth by a post.* If a position is to be made out circumstantially, you must bring forward

a succession of facts and arguments, as it is only by repeated hammering that one may dig a hole by a post.

124. स्थालीपुलाक न्यायः। *Test one rice in a boiling pot.* Of many things similarly circumstanced, of one and the same description, if one is found to possess a certain quality, the rest may be taken to possess it.

125 सूचीकटाह न्यायः। *Having to deal with the needle and the boiler.* If one is required to solve a simple and a hard question at the same time, let him first despatch the former one.

126 सिंहावलोकन न्यायः। *A lion's glance*—at one glance backward and forward like a lion. It means that when a matter shows itself connected with what precedes and what follows, one must take both into consideration at one glance.

127. श्वश्रुर्निर्गच्छोक्ति न्यायः। The mother-in-law who said, "*Be off.*" Abusing another for what one oneself does with a vengeance. The mother-in-law abused her daughter-in-law for refusing to give alms to a mendicant and called him back to tell him, "There are no alms, be off"

128. शृङ्गग्राहिका न्यायः। *Seizing oxen by their horns* As a man disables a bull by catching hold of his horns, so if one takes the most seemingly antagonistic passages first and shows that they are antagonistic, then he gains his point easily. For example, in the Vedanta Darshana, Srutis like 'Prana is Brahman', 'Uktha is Brahman' are first examined and interpreted.

129. शिरश्छेदेऽपि शतं न ददाति विंशतिपञ्चकं तु प्रयच्छतीतिशाकटिक न्यायः। '*The carter who would be beheaded rather than pay a hundred, but will at once pay five score.*' This means that to many people the thing is not of so much importance as its name and the form in which it is presented. With one name they will accept it, with another name they will reject it.

130. वृद्धिमिष्टवतो मूलमपि ते नष्टम्। *Whilst seeking to obtain interest the creditor loses (that and) the capital too.*

131 वृद्धकुमारी वाक्य न्यायः '*The request of the spinster.*' An old spinster asked of Indra to grant the blessing that her son may eat from a metal plate milk, rice and sugar. Thus the old maid by this request asks for a husband, the birth of a son, rice and milch cow *etc.* This is applied to cases in which a sentence has an involved meaning importing several things.

132. विषकृमि न्यायः। '*Worms thriving in poison.*' It is equivalent

to 'what is one man's food is another man's poison.'

133. वरं सांशयिकान्निष्काद्सा शयिकःकार्षापणः । *Better is a certain karshapana than an un ertain Nishka.* It corresponds to the saying. 'A bird in the hand is worth two in the bush.'

134. मानाधीना मेयसिद्धिः । *To know the thing to be measured you must know the measure.*' It is a principle of practical logic.

135. मध्य दीपिका न्यायः । *The lamp in the centre.* 'The idea of a lamp shedding light on both sides. When a term has a connection both with the preceding and the following clauses after the manner of a lamp placed in the door, then this maxim is applied according to the explanation of Professor Gough.

136. मराडूक प्लुति न्यायः । The maxim of *a frog's leap.* It is used by grammarians and others to express the passing from one rule to [another over intervening ones. The St Petersburg Lexicon gives references to its use in the commentary on Panini 1. 4. 47 (in the old Calcutta Edition of 1870), and in the Siddhant-Kaumudi on Panini 5. 1 117.

137. बीजाङ्कुर न्यायः । The maxim of *the seed and the shoot.* 'As the seed produces the shoot, so the latter in turn reproduces the former. Each therefore is a cause and an effect of the other. This maxim is met with very frequently in ancient literature such as in Brahmasutra-bhashya 2. 1. 36.'

138. प्रधान मल्लनिर्बहण न्यायः । The maxim of *the destru.tion of the chief antagonist.* The principle that when the most formidable enemy has been defeated, the less formidable are also virtually overcome. A reference of this maxim has been made in the Bhashya on Vedant Sutra 1 4. 28.

139. पिष्टपेषण न्यायः । The maxim of *the grinding of that which is already ground.* It implies fruitless reiteration, and unproductive repetition. A reference of it has been made in Sankara's Bhashya on Kena Upanishad 32.

140. पाटच्चरलुण्ठिते वेश्मनि यामिक जागरणम् । *The vigilance of the watchman after the house has been plundered by thieves.* It occurs in Khandanakhandakhadya p. 45. Its English equivalent is "shutting the stable door after the horse is gone."

141. घट्टकुटीप्रभात न्यायः । The maxim of *daybreak in the vicinity of the toll collector's hut.* 'A man, anxious to avoid paying toll, takes another road, but losing his way in the dark, finds himself at daybreak, in the vicinity of that very toll-gate. The saying is employed to illustrate *Uddeshyasiddhi* उद्देश्यसिद्धि as Professor Cowel puts it, that is,

failure to achieve a desired object. It occurs in the Panini section of Sarvadarsanasangraha.

142. **गगनरोमन्थ न्यायः ।** The maxim of *ruminating on ether.* It is equivalent to *beating the air.* It has been mentioned twice in the Sarvadarsanasangraha

143 **कूपमण्डूक न्यायः ।** The maxim of *a frog in a well.* It is applied to an inexperienced person brought up in the narrow circle of home, and ignorant of public life and mankind in general.

144. **काशकुशावलम्बन न्यायः ।** The maxim of *catching at straws.* It implies to one being driven to an argument or position wholly untenable. Professor Cowell has rendered it 'like a drowning man's catching at straws.'

145. **काकाक्षिगोलक न्यायः ।** 'The maxim of *the crow's eye-ball.* Crows are popularly supposed to have only one eye, which, as occasion requires, moves from the cavity on one side to that on the other. The maxim is used in respect of a word which appears only once in a sentence but which applies to two portions of it ; or to persons or things fulfilling a double purpose.

146. **काकतालीय न्यायः ।** 'The maxim of *the crow and the palmyra fruit.* A crow alighted on a palmyra tree, and at the same moment some of the fruit fell on its head and killed it. The maxim, is therefore, used to illustrate a startling and purely accidental occurrence.'

147. **आकाशमुष्टिहनन न्यायः ।** 'The maxim of *striking the sky with one's fist.* A vain attempt at an impossibility. It occurs in Sarvadarsanasangraha of Jaimini.

148. **अस्त्रमस्त्रेण शाम्यति ।** '*A weapon is silenced by a weapon.* Its equivalent is 'Like cures like' or 'set a thief to catch a thief.' It occurs in Jnanottama's commentary on Suresvaras's Naishakarmyasiddhi I. 81.

149. **अजाकृपाणीय न्यायः ।** The maxim of *the she-goat and the sword.* It is founded on the story of a goat having been suddenly killed by accidental contact with a sword, and is used to illustrate any surprising event happening altogether by chance.

150. **अवयवशक्तेः समुदायशक्तिर्बलीयसी ।** *The strength of community is greater than of a member of it.* Its equivalent is 'Union is strength.' It occurs in Kavyapradipa p. 388.

151. **अर्थी समर्थी विधानाधिक्रियते ।** *He has the right who has the want, the power, and the wit.* Sarvadarshanasangraha of Jaimini referred to this maxim. Professor Cowell translated it thus:—

"According to the old rules, he has the right who has the want, the power, and the wit,—those who are aiming to understand certain things, as the new and full-moon sacrifices, use their daily reading to learn the truth about them."

152. वध्यघातमार न्यायः। The maxim of *the destroyer and its prey*. It occurs in Taitiriya-Vartika 2. 1. 66. (p. 53)

153. करबिल्वस्थबिल्व न्यायः। The maxim of *the wood apple on the* [open palm of the] *hand* It is said of something unmistakably clear. 'As plain as a pike-staff.' It occurs in Vartika 1. i. 95.

Mimansa Pramanas.

A reference to the Mimansa Pramanas *i.e.*, means of proof in connection with these popular maxims would aptly show their character and rationale. The Mimansa philosophy recognises the following seven Pramanas:

(1) शब्द् *Shabda*—Revelation

(2) प्रत्यक्ष *Pratyakshya*—Direct sensual perception.

(3) अनुमान् *Anumana*—Inference.

(4) उपमान् *Upamana*—Illustration by simile.

(5) अर्थापत्ति *Arthapatti*—Irresistible conclusion of truth from a combination of facts.

(6) शिष्टाचार *Shishtachara*—Conduct of wise men.

(7) अभाव *Abhava*—*Reductio ad absurdum.*

One school recognises only six. Some of these apply to the subject of interpretation. The first one—Shabda Pramana—is similar to the Sruti principle where the text itself has a clear intention and purpose; where they are to be made by inference or by analogy it would be the case of *Anumana* or *Upamana*. The popular maxims are their illustrations. They bear upon the subject of interpretation by inferential reasoning, and by analogical process. Kumarila Bhatta explains exhaustively the method followed in these two processes.

EXPLANATORY REMARKS ON THE ABOVE POPULAR MAXIMS

"The first nine maxims (Nos. 71 to 79) given before are all in the nature of abstract propositions and are of a technical nature, directly bearing on the subject of judicial interpretation. They are of the same nature as the general maxims of the Roman Law, mostly you will find them in the corresponding maxims of the Jaimini Sutras." (*x*)

The other maxims such as Nos. 82, 89, 102, 104, 105, 108, 123 *etc.*, are of general abstract propositions. Other maxims are based on considerations of expediency, which remove the difficulty of an interpreter and show him the course which is expedient. The maxims

(*x*) K. L. Sarkar-Mimansa Rules of Interpretation p. 370.

Nos. 92 and 107 illustrate this point and suggest that the shorter course should be preferred to the longer one. Such maxims give directions to the interpreter in cases of knotty points found in a text.

Another class or the third class of maxims serve to clear up the meaning of a text by showing its analogy to some particular trenchant facts or to some striking truth. They are practically in the form of similies (*Upama*). The following maxims illustrate the point in question :

The maxim (No. 80) 'Eating from the brazen vessel' occurs in the chapters of Tantrata in relation to the question whether where there is a primary duty, and also a derivative duty, both having the same purpose, the derivative should be ignored. The answer is in the negative and both the duties having equal claims, there is no conflict between them.

The maxims Nos. 81, 88, 94, 96, 97, 100 are all maxims of this class and are of a peculiar character. The maxim (No. 81) of the 'lamp on the threshold' should be considered in connection with the non-splitting of a sentence into two propositions. The latter favours construction by which one thing is to be taken as intended at a time; the former favours a double purpose; but the two are not contradictory. A proposition or a sentence may have one idea in the main but it may be construed to serve a double purpose. As regards the maxim (No. 88) of 'the larger fish eating the smaller,' in case of a conflict between a principal proposition and a subordinate proposition, the latter is to be ignored. The '*Samanya Vishesha*'—*the general and the particular*—the particular supersedes the general. Thus on comparison there is no inconsistency between the two maxims as in the latter both propositions are in the affirmative while in the former, one is affirmative and the other is negative. The *Mango-tope* maxim is similar in effect to the Pranabhrita maxim. The maxim of '*the crow and the curdled milk* and that of '*fetching water*' are analogous, but not identical. In the former a narrow expression is to be taken in a comprehensive sense, while in the latter when there is an indication of a purpose, all its incidents are to be implied. There are some points of resemblance in the maxims—*the wristlet of the the wrist*,' '*the Brahmin and the holy traveller*.' In the former the word wrist seems to be superfluous but in order to give it a meaning, it is to be taken as indicating that the ornament of the wrist is actually being worn on the wrist. In the second maxim, the latter word includes the former and its use is supported for emphasising the same sense. This maxim is identical with the one named '*the cattle and the bull*.' The maxims of the '*staff and the cake*' and of Kaimutika (*what after*) are quite similar as

both show that one thing being established, another is established *a priori.*

SECTION 6. MISCELLANEOUS MAXIMS

Class V. Group A

154. The maxims regarding *the necessity of qualifications:*

Maxims as to personal competency.

"There must be rules of qualifications as indicated by the nature of a complete act." [Jaimini VI. i. 5] कर्तुर्वाश्रुतियोगात् विधिः कात्स्न्येन गम्यते "The qualifications for any special class of acts are generally determined in three ways; by texts of general competency, prohibitory Vidhi texts, or by specific mention." [Tithitattwa p. 98]

त्रिधैवज्ञायते वार्त्ता विशेषेण प्रतिक्रियम्।
योगत्व प्रतिषिद्धत्व विशेषेण पदान्वयैः॥

General competency is indicated by the text: "Duties must be done by those who are pure and living at the time" [Tithitattwa p. 22] शुची तत्काल जीवी कर्म्मकुर्यात्। Living at the time is not alone sufficient, He must have the capacity to understand the nature of the business. ".That also which a seemingly independent person does but who has lost control over his action, is declared an invalid transaction, on account of his want of real independence." [Narada]

स्वतन्त्रोऽपि हि यत्कार्यं कुर्यादप्रकृतिं गतः।
तदप्यकृतमेव स्यादस्वातन्त्रस्य हेतुतः॥

155. The maxims as regards the *competency of women:*

"In the opinion of Badarayana, all without any distinction (who desire heaven) can perform sacrifices. A woman, therefore, is included, because the whole mankind without any distinction is included." [Jaimini VI. i. 8]

जातिं तु वादरायणोऽविशेषात् तस्मात् स्त्र्यपि।
प्रतीयेत जात्यर्थस्याविशिष्टत्वात् ॥

"In fact, in the case of married people, the husband and wife must join in sacrifice" [Jaimini VI. i. 4]

यागे दम्पत्योः सहाधिकाराधिकरणम्।

As regards establishing the sacred fire, the husband is a necessary party.

"Qualification is recognised; therefore the dual number (is made up) by a wife." [Jaimini VI. i. 23]

गुणस्य तु विधानत्वात् पत्न्या द्वितीयशब्दः स्यात्।

156. The maxim that *poverty is not a disqualification:*

"Not so, because (wealth is) unstable, (that is, one may possess

it or not); necessarily it may be acquired." [Jaimini VI. i. 41]

अनित्यत्वात् तु नैवं स्यादर्थाद्धि द्रव्य संयोगः ।

157. The maxim that *loss of any limb is not a disqualification :*

"Again, the maimed (has) that quality (of competency to sacrifice)." [Jaimini VI. i. 41] अङ्गहीनश्च तद्धर्मा "but persons suffering from incurable diseases cannot perform a sacrifice." [Jaimini VI. i. 10]

अचिकित्स्याङ्ग वैकल्यस्य यागानधिकाराधिकरणम् ।

Class V. Group B

Maxims relating to *the conditions which the performers or doers of an act must observe* :

158. "If an act which is originally optional be commenced it must be completed in accordance with the prescribed rules." [Jaimini VI. ii. 3.]

आरब्धकाम्यकर्म्मणोऽपि समाप्ति नियमाधिकरणम् ।

159. "Such parts of a permanently enjoined act as are essential, are alone to be performed." [Jaimini VI. iii. 1.]

अथ नित्ये यथाशक्ति अङ्गानुष्ठानाधिकरणम् ।

160. "A material may be substituted for a material which is spoilt and has become useless." [Jaimini VI. iii. 4.]

द्रव्यापचारे प्रतिनिधिना समापनाधिकरणम् ।

The substitution takes place, because the performance of an obligatory act is a general duty." [Jaimini VI. iii. 15.]

आगमो वा चोदनार्थाविशेषात् ।

161. "None can be substituted in the place of the sacrificer himself." [Jaimini VI. iii. 7.]

स्वामिनः प्रतिनिध्यभावाधिकरणम् ।

162. "The principal material should be used even if a substituted be better and more useful" [Jaimini VI. iii. 18].

सत्यपि संस्कार योग्येऽमुख्ये मुख्यस्यैवोपादानाभाधिकरणम् ।

163 Even a principal material should be given up and a substitute made for it, if it conflict with the purpose of the act." [Jaimini VI. iii. 19.]

प्रयोजनायोगस्य मुख्यस्य सत्वेऽपि प्रतिनिध्यादानाधिकरणम् ।

164. "Every one contributing to a sacrificial act obtains the whole benefit of the sacrifice." [Jaimini VI. vi. 1]

सत्रे समान कल्पानां सहाधिकाराधिकरणम् ।

Class V. Group C

Maxims regarding *the ownership of property* :

165. "The disposing power belongs only to the owner." "Of that only, one has the disposing power of which one is the owner, other things not being within his competency." [Jaimini VI. vii 2]

'The commentators take this Adhikarana as showing that a man cannot give away his presents in fulfilling his vow of giving away all his property. But this maxim is of a comprehensive character and indicates the essence of the proprietary right. It also indicates the conditions of owning a thing, inasmuch as it shows that in order to own a thing, there must be a person who can exercise disposing power over it. Hence the following principles have been deduced from the above by later writers.'

Five principles regarding property.

(1) Property can never be in abeyance.

(2) Property must vest in some person, real or ideal.

(3) Ownership is extinguished by sale, gift, death, degradation and change of religious order.

(4) Property is for enjoyment and for performance of acts of religious merits.

(5) Every one is capable of acquiring or holding merits.

The latter rule is also directly supported by the Jaimini Sutra 41 Chap. 1. Book VI.

Property never in abeyance.

The principle that succession can never remain in abeyance is not founded upon any special text, but it is a logical deduction from the conception of succession. According to Hindu Law title by succession arises, without any reference to the volition of any individual, by the operation of a rule of law, and since this rule comes into operation at once on the extinction of the previous ownership, it follows that there cannot be any interval between extinction of interest of the predecessor and the accrual of the interest of the successor for were it otherwise then during the interval the property would be reduced to a condition of a *res nullius*. In this respect, therefore, it differs from the Roman Law according to which acceptance of the inheritance by the heirs except in the case of those who were *sui juris*, was a condition of the estate being vested in him. This was known as "heirs-necessaries". The result of this was, as Sir William Markby points out, that there was a space of time, very often a considerable one, during which, whatever the theory might be, the inheritance did in fact belong to no one. This difficulty was got over partly by the doctrine of "Relation back" as it is called *i.e.*, the heir though he could not be described as an heir before he

accepted yet, when he accepted, he was treated exactly as if he had succeeded immediately on the death of the owner still the difficulty remained as in the interval the inheritance was vacant, and was apt to give rise to practical inconveniences which no law could remedy.

The right of succession under Hindu Law is a right which vests immediately on the death *of the owner of the property. It cannot in* any circumstance remain in abeyance in expectation of a birth of a preferable heir not conceived at the time of the owner's death. A child who is in the mother's womb at the time of the father's death is in contemplation of law actually existing, and will on his birth divest the estate of person with a title inferior to his own who has taken in the *meantime* (*a*). *So in certain circumstances will a son who is adopted* after the death of the owner. But in no other case will an estate be divested by the subsequent birth of a person who would have been a preferable heir, if he had been alive at the time of the last owner's death. And the rightful heir is the person who is himself the next of kin at that time. No one can claim through or under any other person who has not himself taken nor is he disentitled to inherit because his ancestor could not have claimed. For instance, in certain circumstances, a daughter's son would be heir and would transmit the whole estate to his issue. But if he died before his grandfather his son would never take. So again the son of a leper or a lunatic or of a son who has been disinherited for some lawful cause will inherit though his father could not (*b*)

166. The maxim that there is no ownership in the King to the soil which constitutes his dominion [Jaimini VI. vii. 2.]

विश्वजिति पृथिव्या अदेयत्वाधिकरणम् ।

This maxim cannot be better explained than in the language of Nilakantha who says : "It is stated in the sixth book of the Purva Mimansa, that the whole earth cannot be given away by the king of the world; neither the (whole) Mandala (dependency) by the ruler of that dependency. The ownership in each village, field and like of the whole earth, or the dependency belongs solely to the respective Bhaumikas or landlords.

The ruler has only to take the taxes Hence, in what is now technically called a gift of land, a gift of the soil is not accomplished,

(*a*) Tagore case 9 B L. R. 39.

(*b*) *Balakrishna* v. *Savitri Bai* 3 Bom. 54.

but only a grant of due allowance (is provided) *etc.*" (*c*)

Colebrooke's observations on this Adhikarana are as follows :—

"A question of considerable interest, as involving the important one concerning property in the soil of India, is discussed in the sixth lecture. At certain sacrifices, such as that which is called Viswajit, the votary, for whose benefit the ceremony is performed, is enjoined to bestow all his property on the official priests. It is asked whether a paramount sovereign shall give all the land, including pasture ground, highways, and the site of lakes and ponds; a universal monarch, the earth; and a subordinate prince, the entire province over which he rules?" To the question the answer is : "The monarch has not property in the earth, nor the subordinate prince in the land. By conquest kingly power is obtained, and property in houses and fields belonging to the enemy. This maxim of the law, that "the king is lord of all excepting sacerdotal wealth" concerns his authority for correction of the wicked and protection of the good *etc.*" (*d*)

Besides the miscellaneous maxims mentioned above a few more legal maxims, as gathered from Manu Smriti, are given below :

167. "It is for the king to protect the property of barren women deserted by their husbands, or women who are childless and friendless or are widows and diseased." [VIII. 28]

वशाऽपुत्रासु चैवं स्याद्रक्षणं निष्कुलासु च ।
प्रतिव्रतासु च स्त्रीषु विधवास्वातुरासु च ॥

168. "If one enjoy and use the property of another, such as cattle *etc.* as a friend, the owner's right is not lost by such enjoyment and use. But the right is lost when for a period of ten years one enjoys the property of another in his presence and without objection and not as a friend." [VIII. 146-47]

सम्प्रीत्या भुज्यमानानि न पश्यन्ति कदाचन ।
धेनुरुष्ट्रो वहन्नश्वो यश्च दम्यः प्रयुज्यते ॥
यत् किंचिद्दश वर्षाणि, सन्निधौप्रेक्षते धनी ।
भुज्यमानं परैस्तूष्णीं न स तल्लब्धुमर्हति ॥

169. "Use and enjoyment do not destroy the right of the owner when the property is the borderland of land or it belongs to a minor or is placed in the possession of another as a deposit." [VIII. 148]

अजड़श्चेदपोगण्डो, विषये चास्य भुज्यते ।
भग्नं तद्व्यवहारेण भोक्तातद्द्रव्यमर्हति ।

(*c*) Vyavahara Mayukha, Mandalik's Ed. pp 34-35.
(*d*) Colebrooke's Miscellaneous Essays pp. 345–46.

170. "If the interest is monthly and is allowed to accumulate, the creditor is not entitled to recover more than double amount, including interest, and not more than five times, if the thing lent be cattle, crop or wood" [VIII 151]

कुसीदवृद्धिर्द्वैगुण्यं नात्येति सकृदाहृता।
धान्ये सदे लवे वाह्ये नातिक्रामति पंचताम्।

171. "Compound interest among other unconscionable stipulations is not allowable by the Shastras" [VIII. 153]

नातिसांवत्सरीं वृद्धिं, न चादृष्टां पुनर्हरेत्।
चक्रवृद्धिः कालवृद्धिः कारिता कायिका च या।

172. "Contracts by the drunken, the insane, infants and men past eighty years of age, and contradictory contracts are not valid."

[VIII. 163]

मत्तोन्मत्तार्त्तध्यधीनैर्बालेन स्थविरेण वा।
असंबद्धकृतश्चैव, व्यवहारो न सिध्यति॥

173. "A promise to do a thing reduced to writing is not binding if not sanctioned by law." [VIII. 164]

सत्या न भाषा भवति यद्यपि स्यात् प्रतिष्ठिता।
बहिश्चेद्भाष्यते धर्मान्नियतात् व्यावहारिकात्।

174. "The sons are liable to pay the money for security contracted by their father in case of his death but no liability devolves when the security is to produce a person." [VIII. 160].

दर्शनप्रातिभाव्ये तु विधिः स्यात्पूर्वचोदितः
दानप्रतिभुवि प्रेते दायादानपि दापयेत्।

175. "Fraud vitiates sale, mortgage and gift." [VIII 165]

योगाधमनविक्रीतं योगदानप्रतिग्रहम्।
यत्र वाप्युपधिं पश्येत्तत् सर्वं विनिवर्तयेत्।

176. "If a man dies having contracted a debt for the necessities of the family, the family members whether divided or undivided must pay off that debt." [VIII. 166]

ग्रहीता यदि नष्टः स्यात् कुटुम्बार्थे कृतो व्ययः।
दातव्यं बान्धवैस्तत् स्यात् प्रविभक्तैरपि स्वतः॥

177. "If during the absence of the master a servant contracts a debt for the family, the master must pay it." [VIII. 167]

कुटुम्बार्थेऽध्यधीनोऽपि व्यवहारं यमाचरेत्।
स्वदेशे वा विदेशे वा तं ज्यायान्न विचालयेत्॥

178. "If a transaction is brought about by force for the execution of a document or the like, the transaction is void." [VIII. 168]

बलाद्दत्तं बलाद्भुक्तं बलाद्यच्चापिलेखितं ।
सर्वान् बलकृतानर्थानकृतान् मनुरब्रवीत् ।

Many of the principles given above are deemed as principles of equity under the English Law. These fundamental principles have nothing to do with the law of interpretation, but they are given here to show that the Hindu Law is not wanting in them.

SECTION 7. GENERAL RESEMBLANCE BETWEEN WESTERN AND HINDU LEGAL MAXIMS

It would be profitable to consider the resemblance or otherwise between the two systems—the Hindu and the Western—as regards those formulas of interpretation which are termed maxims.

Maxims relating to (1) Public policy.

179. Yajnyavalkya says, "Of all acts—[such as] sacrifices, ceremonial observances, repression of sensual desires, harmlessness, gifts, and the study of the Vedas—this is the best *Dharma* (namely) viewing one's own self as merged in humanity." (*a*) The sacrifice of individual interests for the sake of public good is the spirit of the Smriti law. It is evidenced by Savara Swami thus, "Tanks should be dug." "Public roads should be constructed." So it is ordained that money is to be spent by individuals for public works and they should suffer inconveniences for the convenience of the public. *Yogakshema* has been explained by the Mitakshara, in the section on impartible properties, to mean works of public utility, by performing which the blessing acquired by pious acts is conserved. A similar English maxim as given by Broom is *Salus Populi suprema Lex* which means that regard for the public welfare is the highest law, or that interest of the individual should be sunk in that of the community.

180. The Mahabharata expounds one's duty in times of calamity in the chapter on *Apadharma*. For example, two persons, being ship-wrecked, are supporting themselves on the same plank. When it is impossile for both of them to be saved, one of them may save himself by throwing the other down; this homicide is excusable through unavoidable necessity.

Smritis also uphold such deviations from ordinary duties in times of calamity. Yajnyavalkya (*b*) says :

"Having suffered starvation for three days a man may take

(*a*) Institutes of Yajnavalkya, Acharadhya Ch. 1, sec. 8.

(*b*) Prayaschittwa Adhyaya sec. 43

the grain of others except that of a Brahmana, but should pay and confess when complained against."

क्षुभक्षितस्त्र्यहं स्थित्वा धान्यमब्राह्मणाद्धरेत् ।
प्रतिगृह्य तदाख्येयमभियुक्तेन धर्म्मतः ॥

There is a similar maxim in Latin : *Necessitas Inducit Privilegium quoad Jura Privata*—With respect to private rights, necessity privileges a person acting under its influence.

181. It is an acknowledged principle that the Smriti (common law) must be either actually or constructively derivable from the Vedas, and that our law is religion.

This fundamental principle of Hindu Law has been but faintly expressed in the Western system : *Summa Ratio est quoe pro Religione facit*—that rule of conduct is binding which is consistent with religion.

182. The Shastra-writers have laid down on the basis of the *Apachheda* maxim that, what follows supersedes what goes before.

(2) Legislative policy.

पूर्वं परेण । यथा "यद्युद्गाताऽपच्छिद्यते अदक्षिणो यज्ञः परिसमाप्यते यत्पूर्वस्मिन्दास्यन्नुस्यात् तद् दद्यात् । यदि प्रतिहर्ता सर्ववेदसं दद्यादि" ति द्वयोर्निमित्तयोर्द्वे नैमित्तिके विहिते तत्र निमित्तपौर्वापर्य्ये परेण नैमित्तिकेन पूर्वनैमित्तिकं बाध्यते । [Sree Bhatta Sanker's Mimansa Bala Prakasha p. 181.]

This principle is recognised, though no statute law is contemplated by Hindu Law, and the Smritis are presumed to have come into existence simultaneously with the Sruti.

But the necessity of such a principle is very essential in the Western system owing to the existence of the statutory law and the maxim is : *Leges posteriores priores contrarias abrogant.*—When the provisions of a later statute are opposed to those of an earlier, the earlier statute is considered as repealed.

183. *Nova Constitutio futuris Formam imponere debet non præteritis.*—A legislative enactment ought to be prospective, and not retrospective, in its operation.

"There being no idea of legislation in the Hindu Law, there cannot be any counterpart of this maxim, in its strict form, in the Shastras. But, as a principle of jurisprudence, it is laid down in the Mimansa Shastra, that a text which relates to events as a matter of history cannot be regarded as a Vidhi, but is to be taken as a *Bhutarthavada* (recital of what has happened). It is also laid down that the very conception of a Vidhi is what is to be done in the future

(*Apraptaprapaka*), and not what has been an accomplished fact beforehand (*Praptaprapaka*)." (*a*)

184. *Ad ea quoe frequentius accidunt jura adaptantur.*—The laws are adapted to those cases which most frequently occur.

The counterpart of this maxim cannot be fonnd in the Hindu system owing to the want of the idea of legislation.

But this principle has been given in a general way, specially as regards prohibitory Vidhis, which are directed against wrong acts that the people are usually prone to do.

(3) The Crown.

185. *Rex non protest peccare.—The king can do no wrong.*

This principle has not been recognised in Hindu Law as under the Hindu system the king also, like other human beings, can do wrong and by so doing he involves not only himself but his predecessors also in a sin, the punishment of which is everlasting hell, and besides, involves the whole of his kingdom in ruin.

186. *Quando Jus Domini Regis et Subditi concurrunt Jus Regis praeferri debect.*—Where the title of the king and the title of a subject concur, the king's title shall be preferred.

The contrary principle negativing the title of the sovereign to the lands of his dominion which are in the occupation of his subjects, has been laid down in the Viswajit Adhikarana, as explained above.

(4) Logic.

187. *Cessante Ratione Legis cessat ipsa Lex.*—Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself.

This principle coincides with Niyama Vidhis in which out of a number of things which will serve the same purpose, one is selected by law for the carrying out of the purpose, for some special reason. On failure of the special reason, some other things of the class may be substituted for the specially prescribed thing. But the Hindu Law is inflexible as to absolute Vidhis, as explained by the *Hetuvannigadadhikarana* which treats the statement of reason as a recital and it is of no consequence to the law whether the reason continues or not. The law remains good in spite of the failure of any stated reason for it. It has also been said before that where a rule of law is grounded upon a reason consisting of a corrupt or selfish motive, that rule is not at all to be taken as a law, by the principle laid down in the third Adhikarana-*Drishtamulaka Smritiapramanyadhikarana* of Chapter III, Book I (*x*).

188. *Allegans contraria non est audiendus.*—He is not to be heard who alleges things contradictory to each other.

(*a*) K. L. Sarkar, Mimansa Rules of Interpretation p. 470.
(*x*) K. L. Sarkar, Mimansa Rules of Interpretation p. 472.

This principle has been laid down in the maxim of *the two monsters*, as explained above.

189. *Omne majus continet in se minus.*—The greater contains the less. It is similar to the maxim as mentioned before—'*In hundred is fifty.*'

190. *Quod ab initio non valet in Tractu Tempories non convalescit.*—That which was originally void, does not by lapse of time become valid.

Broom (*a*) explains the application of this principle thus: "In the ordinary case, also, of a will void by reason of its not being duly attested according to the provisions of the statute, or on account of the coverture of the testatrix at the time of making the will, all the dispositions and limitations of property contained therein are also necessarily void, nor can the original defect in the instrument be cured by lapse of time."

This principle has been indirectly given by Yajnyavalkya thus: "If a person whose title is impugned should die, his heir should establish it; in such a case enjoyment without title is no proof." [Vyavahara Chapter, sec. 21]

योऽभियुक्तः परेतः स्यात्तस्य रिक्थो तमुद्धरेत् ।
न तत्र कारणं भुक्तिरागमेन विनाकृता ॥

This principle should be read along with the principle of limitation. It lays down an exception to this rule *viz*, that a person loses his title by adverse possession of 20 years for immovables and 10 years for movables:

पश्यतोऽब्रुवतो हानिर्भूमेर्विंशति वार्षिकी ।
परेण भुज्यमानाया धनस्य दशवार्षिकी ॥

191. *Argumentum ab inconvenienti plurimum valet in Lege.*—An argument drawn from inconvenience is forcible in law.

The maxim of Hindu Law akin to this is the *Swaru* maxim
स्वरोश्छेदनाद्यप्रयोजकताऽधिकरणम् । [Jaimini IV. ii. 1—6]

It means that one construction secured with convenience and economy is preferable to one secured with labour and fruitless trouble.

(5) Fundamental legal principles.

192. *Ubi Jus ibi Remedium*—There is no wrong without a remedy.

In the Hindu system, Vyavahara law consists of rules to remedy a wrong done by one man to another. It is evident from the very definition of Vyavahara as given by Yajnavalkya: "If one aggrieved by others in a way contrary to the Smritis and the established usage

(*a*) Broom's Legal Maxims p. 134, and Ed.

complain to the king, that subject is one of the titles of Vyavahara, or a judicial proceeding" स्मृत्याचारव्यपेतेन मार्गेणाधर्षितः परैः आवेदयति चेद्राज्ञि व्यवहारपदं हि तत्। आधर्षितस्तत्कृतः। (*a*) Thus for every wrong which can be the subject of litigation the King is enjoined to enforce the law. The rules of Achara Kanda, congnisable by the ecclesiastical courts, *viz.*, the assemblies of priests, prescribe the remedy to be expiation or penance.

193. *In Jure non remota Causa sed proxima spectatur.*—In law the immediate and not the remote cause of any event is regarded.

This principle is, to a certain degree, indicated by those Sutras of Jaimini by which a thing should be taken in its visible and tangible aspect, rather than in any transcendental aspect.

194. *Lex non cogit ad Impossible.*—The law does not seek to compel a man to do that which he cannot possibly perform.

"Under the Mimansa Shastra when a text apparently enjoins something which is impossible, such text is to be read only as figurative in the nature of an Arthavada. For example, the text which refers to the building of the altar on the earth, in the firmament and in the heavens." [Taittriya Samhita V. 2. 7.] (*b*).

195. *Ignorantia Facti Excusat.—Ignorantia Juris non excusat.*—Ignorance of fact excuses—ignorance of the law does not excuse.

The Hindu system has gone to the extent of holding that even an ignorance of fact is not a complete excuse, and it may be punished with a lesser penalty (*c*).

196. *Nemo debet bis vexari pro una et eadem Causa.*—It is a rule of law, that a man shall not be twice vexed for one and the same cause.

Yajnyavalkya (Vyavahara Adhyaya, sec. 9) lays down the same principle in these words: "Nor should one already charged be allowed to be charged again."

अभियुक्तं च नान्येन नोक्ताम् विप्रकृतिं नयेत्॥

In Chapter 253 Agni Purana has laid down this principle in the same form where the functions of the courts and the procedure to be followed by them have been explained.

197. *Acta exteriora indicant interiora Secreta*—Acts indicate the intention.

Jaimini [II. i. 1.] has also said the same in his Sutra:

"Words relating to action bear on what passes in consciousness. From them external acts proceed."

भावार्थाः कर्म्मशब्दाः तेभ्यः क्रिया प्रतीयेत॥

(*a*) Chapter, Vyavahara; sec. 5.

(*b*) K. L. Sarkar, Mimansa Rules of Interpretation p. 475.

(*c*) Raghunandana's Prayaschittatattwa, sec. 18,

(6) Transfer of property.

198 *Alineatio Rei Præfurtur Juri Accrescendi*—Alienation is favoured by the law rather than accumulation.

The Hindu system does not agree with this principle; it favours accumulation. The Mitakshara and the Dayabhaga both favour accumulation rather than alienation.

199. *Accessorium Non Ducit Sed Sequitur Suum Principale.*—The incident shall pass by the grant of the principal, but not the principal by the grant of the incident.

This principle has been expressed in different forms in the Mimansa Shastra. [Jaimini III. iii. 9]: " When a subordinate matter clashes with the principal, the latter is to prevail.

(7) Law of descent.

200. *Memo est Hæres Viventis.*—No one can be heir during the lifetime of his ancestor.

This is equally recognised by Hindu Law in case of succession to self-acquired property. So far as joint family property is concerned there is no succession and no application of this rule ; in fact the conception of joint family property is peculiar to Hindu Law, more or less akin to corporation.

201. *Hæreditas Nunquam Ascendit.*—The right of inheritance never lineally ascends.

This principle is quite contrary to Hindu Law.

(8) Law of contract.

202 *Qui per Alium Facit per Seipsum Facere Videtur.*—He who does an act through the medium of another party is in law considered as doing it himself.

The Hindu Law has this maxim to match the above :—

——" Causing to be done is to do."

यः कारयति सः करोत्येव ।

203. *Vigilantibus, Non Dormientibus, Jura Subveni ent.*—The laws assist those who are vigilant, not those who sleep over their rights.

This is the basis of the law of limitation. Yajnyavalkya (Vyavahara Adhyaya, sec. 24) has spoken of this principle thus: " To him who sees another enjoy his land for twenty or his money for ten years loss [of that thing] occurs" (see the 2nd verse given under maxim 90.)

(9) Interpretation.

204. *Ex antecedentibus et consequentibus fit optima Interpretation.*—A passage will be best interpreted by reference to that which precedes and follows it. It is, however, subject to this limitation. '*A verbis Legis non Est recedendum*'—No interpretation is to be made contrary to the express letter of the statute.

The maxim in the Mimansa system to this effect is *Ekavakyata maxim* which is guarded against by good many limitations unlike the Roman Law. It is to be read as subject to the principle of *Linga-shabda-samartha* (the vocabular principle) which deals with the latent force of words. When the meaning of a sentence is cleared by examining the meaning of the words it consists of, the Mimansakas would prefer this to that of reading the sentence with what precedes and follows. Therefore, Linga principle has been rightly preferred to Vakya by our Mimansakas.

205. *Absoluta Sententia Non Indiget.*—A positive statement is not in need of any interpreter. This is the Sruti principle of our Mimansa system.

206. *Sensus Verborum Eex causa dicendi accipiendus est.* –The sense of the words ought to be taken from the cause or occasion of speaking them.

In the Mimansa system it is equivalent to the Linga principle.

207. *Expressio unius est Exclusio alterius.*—The express mention of one thing implies the inclusion of another.

This resembles the rule of Parisankhya.

208. *Verba relata Hoc maxime operanturs per Referentiam ut in eis inesse vindentur.*—Words to which reference is made in an instrument have the same effect and operation, as if, they were inserted in the clause referring to them.

It corresponds with the principle of Atidesha.

209. *Conditio Præcedens adimpori debect prinsquam sequator effectus.*—A condition precedent must be fulfilled before the effect can follow.

It is similar to the Mimansa principle : " All the Angas (conditions) of a sacrifice must be performed before a sacrificer can reap the fruits of the sacrifice." [Jaimini VII. iii. 4]

210. *Mellius Est Petere foutes quam Sectari rivulos*—It is better to seek the fountains than to follow the rivulets.

It is similar to the maxim : "When an object can be attained by following a straight path, what is the good of following a circuitous course ?" ऋजुमार्गेण सिद्धेऽर्थे वक्रेण साधनायोगः ।

211. *Sic Interpretandum Estut Verba Accipiuntur cum effectu.*—Such an interpretation is to be made that the words may be received with effect.

This principle has been put by the Mimansakas thus : " More words, more meaning." शब्दाधिक्यात् अर्थाधिक्यम् ॥

212. *Optimus Interpres Rerum Usus*—Usage is the best interpreter of things.

This rule in the Hindu system is embodied in the *Padartha-prabalyadhikarana* maxim of Jaimini [I. iii. 7]: "Without speculations as to causes, usages prevail" अपि वा कारणाग्रहणे प्रयुक्तानि प्रतीयेरन् — with special reference to the Smriti and usage law.

The *Grahapatya* Maxim and the *Barhi* Maxim correspond to the golden rule laid down by Lord Wensleydale which is as follows :

"The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity, repugnance or inconsistency, but no further."

The *Sphadi* Maxim and the *Aruni* Maxim correspond to what Maxwell puts under the head :—Words understood according to the subject-matter.

Maxwell introduces his section on the subject as follows :—

"The words of a statute are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used and the object to be attained." (*a*)

Compare this with the above-mentioned *Sphadi* Maxim and *Aruni* Maxim. The former Maxim is introduced by the Sutra :

"A thing which is connected with the performance of an act of duty as means to an end, must be understood in a sense which is suited to the purpose of that act."

The latter maxim is introduced by the Sutra :

"The purpose being one and the same *viz.*, to promote an action, materials and quantities (thereof) are laid down simply to subserve that action, and not to control it." (*b*)

The Three Debt Maxim answers Maxwell's topic :—

Extension of meaning according to the object.

With regard to the above, Maxwell remarks as follows :—

"Even where the usual meaning of the language falls short of the whole object of the Legislature, a more extended meaning may be attributed to it, if fairly susceptible of it. If there are circumstances in the Act showing that words are used in a larger sense than their ordinary meaning, that sense must be given to them." (*c*)

(*a*) Maxwell p. 74. (Third Edition.) (*b*) Jaimini III. i. 11. (*c*) Maxwell p. 95 (Third Edition).

Compare this with the manner in which the Three Debt Maxim is arrived at.

The *Chitra* Maxim and the *Tad Vyapadesha* Maxim practically run on the same lines as the following topic in Maxwell :—Modification of the language to meet the intention.

The observations of Maxwell under the above head are as follows :—

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship, or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence (*d*)."

Compare this with the way in which *Chitra* Maxim and the *Tad Vyapadesha* Maxim are settled

The *Khameshti* Maxim and the *Swaru* Maxim as well as the *Tantrata* and *Prasanga* principles amount to presumptions against intending what is inconvenient or unreasonable.

Under the above head Maxwell observes as follows :—

"In determining either what was the general object of the Legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most agreeable to convenience, reason, justice, and legal principles should, in all cases open to doubt, be presumed to be the true one. An argument drawn from an inconvenience, it has been said, is forcible in law; and no less force is due to any drawn from an absurdity or injustice." (*e*)

Compare the above with the *Khameshti* Maxim, the *Swaru* Maxim as well as the *Tantra* and *Prasanga* Maxims.

The *Rurhi-yoga* Maxim and *Padartha-prabalya* Maxim correspond to the remarks of Maxwell under the head :—Words construed in popular sense (*f*) and his remarks under the head :—Effect of Usage (*g*).

The *Kalanja* Maxim and the *Paryudasa* Maxim cover Maxwell's observations under the head of 'Repugnancy.' (*h*)

The Maxim of *Arthavada* includes the subject of Recital *etc.*

An Arthavada roughly corresponds to a *recital* or *preamble*, as already explained. Jaimini speaks of it as being the *stuti* (that which expresses the merit) of a Vidhi. Later writers describe it as showing *Prashastya* (scope) of a Vidhi. The object of a preamble or recital is roughly the same. According to English Law mere recital in a statute, either of fact or law, is not conclusive.

(*d*) Maxwell p. 319 (Third edition). (*e*) *Ibid* p. 264.
(*f*) *Ibid* p. 77. (*g*) *Ibid* p. 423. (*h*) *Ibid* p. 214.

Compare *Reg.* v. *Haughton* (*i*) ; *Bently* v. *Rotheram* (*j*); *Crowder* v. *Stewart* (*k*) ; with the Mimansa principle known as Vidhivannigada Maxim and Hetuvannigada Maxim.

The principle laid down in the case of *Reg* v. *Bishop of Oxford* (*l*) has been followed in many cases in this country. It is this:

" A statute ought to be so interpreted that, if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant."

It has already been shown that this principle is expressed by Hindu writers by the short Maxim—More words, more meaning.

शब्दाधिक्यात् अर्थाधिक्यम् ।

The above instances are sufficient to show that although the method of treatment is somewhat different in the two systems they substantially agree.

Principles of interpretation other than maxims.

There are some popular principles of construction other than maxims treated by certain authors and they deserve consideration. They are given below:—

(1) when in establishing a particular proposition several reasons are successively given in clauses, each preceded by such word as *Kincha, Yadva, va,* the reason last given is to be accepted as the correct one; the preceding ones would be taken as *obiter dictum* according to modern legal phraseology.

(2) When several alternative propositions are formulated in the same sentence with the word *va* (or) without any indication of a conclusion, it would imply that the author does not approve of any of them.

(3) When two reasons are given in the same clause for any particular proposition, the reason last given is taken as being merely corroborative—*Sadhaka* साधक. Jaimini often uses such words as *Darshanat* दर्शनात्, *Lokavat* (from observation as with worldly people) लोकवत् although according to his own philosophy, matters of perception or personal knowledge cannot be relied upon, in discussing what is Vidhi and what is not a Vidhi.

(*i*) I. E. and B. 501.
(*j*) 4 Ch. D. 588, 46 L. J. Ch. 284.
(*k*) 16 Ch. D. 36
C. L. R. 4 Q. B. D. 261.

CHAPTER V

GENERAL MIMANSA PRINCIPLES REGARDING THE APPLICATION OF TEXTS

Jaimini's work is divided into two equal parts, each half containing six books, called *Shataka*. The first *Shataka* contains the general principles of interpretation and application, *viz.*, the important class of rules, called the Adhikara Vidhis (the rules indicating rights, as opposed to rules imposing duties); and also the class of rules, called Krama Vidhis (the rules regulating the order in which things are done). The second *Shataka* generally relates to the mode in which the rules of conduct prescribed in connection with one topic are to be applied to the other topics. This half deals with the rules of Atidesha, Uha, Badha, Tantra and Prasanga.

The general Mimansa principles regarding the application of texts may be treated under the following heads:

I. The principle of distinguishing between obligatory texts on the one hand and quasi-obligatory and non-obligatory texts on the other.

II. The principle of *Adhikara Vidhis* अधिकारविधि, or principle for ascertaining those to whom the Vidhi texts are applicable.

III. The principle of *Krama* क्रम or the principle by which the order in which the texts are to be applied is determined.

IV. The principle of *Atidesha* अतिदेश (rules of reference, general and special) or the principle by which the rules regarding one matter are made to bear on another.

V. The principle of *Uha* ऊहा (adaptation) or the principle by which in the course of effecting an Atidesha, necessary modifications are to be made to secure a proper adaptation.

VI. The principle of *Badha* बाधा (bar) or the principle by which in the event of incongruity between one thing and another, either in connection with the application of Atidesha or otherwise, a subordinate incongruent matter is barred by the principal.

VII. The rules of *Tantra* तन्त्र (one word expressive of several

meanings) and *Prasanga* प्रसंग (context) both of which provide against the unnecessary repetition of the same act (*x*).

Distinction between interpretation and application of texts.

There is a distinction between the interpretation of texts and their application, though sometimes they are not separable. As, for instance, the interpretation of the phrase '*Dayoh Pranayanti*,' is one thing and it is quite a different thing to know whether it is to apply to the Saumika Yajna or to the Darshapaurnamashi Yajna. In the same way, when the texts describe some act, it is one thing to comprehend the act described and another to know whether it is obligatory or otherwise. In this case the distinction no doubt exists as to the interpretation and application of texts, but it is not sharp. The primary rule, therefore, in this connection is to determine whether a text is to be applied as obligatory, or it is to be taken as quasi-obligatory or as altogether non-obligatory. This rule is of great importance in the general principles of the application of texts.

SECTION I. OBLIGATORY, NON-OBLIGATORY AND QUASI-OBLIGATORY VIDHIS

The Vedic texts may be classified as follows:—

I. **Obligatory**:—(1) *Vidhi* विधि (injunction).

(2) *Nishedha* or *Pratisedha* निषेध (prohibition).

II. **Non-obligatory**:—(3) *Arthavada* अर्थवाद (explanatory statement).

(4) *Namadheya* नामधेय (nomenclature).

III. **Quasi-obligatory**:—(5) *Mantra* मंत्र (sacrificial formulæ).

An **obligatory** text is one which imposes an obligation, either in the shape of a principal Vidhi, or an applicatory Vidhi, or as a necessary condition to the doing or not doing of a thing enjoined by a Vidhi or prohibited by Nishedha.

A **non-obligatory** text is one which neither imposes an independent obligation nor adds to an obligation already imposed.

A **quasi-obligatory** text is one which creates an imperfect obligation. It occupies an intermediate position between the two and is sometimes invested with the character of a Vidhi and sometimes not.

This classification is intricate, as there is a large number of texts, which on the face of them are of a dubious character; or, in other words, which apparently belong to one class, but which, in fact, should belong to another. It sometimes appears a very difficult task for the interpreter to determine the true application of such texts or the true character of a text, the intention of which is expressed clearly. A similar difficulty

(*x*) K. L. Sarkar's Mimansa Rules of Interpretation, p. 73.

is often exprienced in the interpretation of the Vedas, the Smritis, and modern legislative enactments.

Comparison of: object and reason — Pradhana Chodana.

Maxwell (*y*) says, "Passing from the interpretation of the language of statutes, it remains to consider what intentions are to be attributed to the Legislature, where it has expressed none, on questions necessarily arising out of its enactments."

"Although, as already stated, the Legislature is presumed to intend no alteration in the law beyond the immediate and specific purposes of the Act, these are considered as including all the incidents or consequences strictly resulting from the enactment."

The object and purpose of the Vedic law is expressed in one broad statement in the shape of a general injunction—the *Pradhana Chodana* (the primary command), *viz.*, *Swarga Kamo yejeta* स्वर्गकामो यजेत । (attainment of heavenly bliss). Regard being had to this main purpose and object of the Vedas, the application and the true character of all imperfect and obscure texts are settled. This process with regard to ascertainment of objects and reasons is resorted to in the case of modern enactments; it should be similarly resorted to in connection with Smriti texts and the texts of digest writers.

Arthavada.

In the Vedic law, what is an Arthavada as distinguished from a Vidhi? It does not impose any obligation additional to the Vidhi and is in the shape of an allegory, parable or a fable. It is in the nature of a parenthetical explanatory clause, either containing a praise of the Vidhi, or giving a popular illustration of it or showing some popular reason for it. But in the Smriti literature or in the digest there is no Arthavada in the shape of an allegory, parable or a fable. So Vedic Arthavada of this nature may be left out of consideration, but Arthavada dealing with popular reasons and popular illustrations is similar in both the Vedic and Smriti literature. These should not be confused with obligatory texts. The Mimansa rules have taken special care to prevent such confusion, as for instance, the rule of

I. Vidhivannigadadhikarana.

Vidhivannigadadhikarana अथ विधिवन्निगदाधिकरणम् [Jaimini I. ii. 2]—the topic of Arthavada looking like a Vidhi. This topic consists of the following Sutras:

The objector: "Why not take(a descriptive clause) having an effective sanction, as a Vidhi; to take it as a mere description is to make it useless." विधिर्वा स्यादपूर्वत्वात् वादमात्रं ह्यनर्थकम् [Jaimini I. ii. 19].

The objector continuing, "would you say (its apparent operative

(*y*) Page 493, 3rd Ed.

character) is like the light talk of common people." लोकवादेति चेत् ॥ [Jaimini I. ii. 20].

The objector himself answering : "It cannot be so, for in the latter case there is some antecedent cause." न पूर्वत्वात् [Jaimini I. ii. 20].

Jaimini says, "The whole thing has been explained, as it is a case of an explanatory cause forming part of a Vidhi." उक्तं तु वाक्यशेषत्वम् [Jaimini I. ii. 22].

Proceeding he says, "In some cases to treat a text as a Vidhi is to make it useless. Therefore, it is properly taken as a gloss. In all like cases it is to be so taken." विधिश्चानर्थकः क्वचित् । तस्मात् स्तुतिः प्रतीयेत । तत्सामान्यादितरेषु तथात्वम् ॥ [Jaimini I. ii. 23].

An **illustration** would make it clear: "The Indian fig tree is the tree wherewith the sacrificial post is to be made." "The fig tree is strong and the sacrificed animal (to be tied to it) is strong ; so strong animals are (safely) tied to it. [Taittiriya Samhita II. 1. 1. 6]

उदुम्बरोयूपोभवत्युर्गवा उदुम्बर उर्कपशव उर्जैवास्मा उर्जंपशुनवरन्धे ।

In this text the first clause is a Vidhi, *viz.*, that the Yupa (post) is to be made with the *oudumvari* (fig) wood. This fully gives all that is required in the shape of a Vidhi in this connection. The following clauses, *viz.*, 'the fig tree is strong' 'the animal is strong' are merely descriptive. To treat them as Vidhis, that in making the Yupa you must get a strong fig tree and also a strong animal, *etc.*, will have the effect of stultifying the Vidhi by which the Yupa is to be simply made of the fig wood without any condition. So Jaimini says that the descriptive clauses must be taken as giving a description of what happens.

Another illustration of this fundamental principle of distinguishing an obligatory from a non-obligatory text from Jimutavahana (paras 29 and 30, Chapter II, Colebrooke) will be profitable—

"Though immovables or bipeds have been acquired by a man himself, no gift or sale of them by him, unless convening all the sons"

स्थावरं द्विपदञ्चैव यद्यपि स्वयमर्जितं ।
असम्भूय सुतान् सर्व्वान् न दानं नच विक्रयं ॥

This text relates to self-acquired property and says, 'no sale or gift of the same.' The sentence is defective. Either the words 'must be made' or the words 'should be made' ought to be supplied. If the words 'must be made' were supplied, then you bring into existence a Vidhi, which would stultify the well-known Vidhi admitted by all, that a man has absolute power of disposal over his self-acquired property. It is for this reason that Jimutavahana would read it by supplying the words, 'should be made,' thus making the clause

as a mere precept or Arthavada. So he affirmatively says that in such a case a gift or sale even if made is not a nullity, for a fact cannot be altered by a hundred texts. तथाहि कर्त्तव्यपदमवश्यमत्राध्याहार्य्यं तेन दानविक्रयकर्त्तव्यानि। He is sometimes charged with the violation of judicial rules of construction in his above view.

II. Hetuvannigadadhi karana.

Another important principle for distinguishing an Arthavada from a Vidhi is Hetuvannigadadhikarana अथ हेतुवन्निगदाधिकरणम्। [Jaimini II. ii. 3]—the topic of *a descriptive clause in the shape of a reasoning.* This Adhikarana lays down that where there is the statement of a reason showing why a particular thing is enjoined in an applicatory Vidhi, this reason should not be taken as an essential part of the Vidhi, that is to say, the obligatory nature of the words of the Vidhi text is not affected by the statement of the reason. If it were so affected, the Vidhi should cease where the reason would cease. This principle is given by the following Sutras :

The objector :—"The reason must be taken as being the essence and the basis of the Vidhi." हेतुर्वास्यादर्थवत्त्वोपपत्तिभ्याम् ॥ [Jaimini I. ii. 26]

Jaimini.—"A reason is but a gloss, as it is preceded by an operative clause and it does not form the mandatory term of that clause." स्तुतिस्तुशब्दपूर्वत्वादचोदना च तस्य। [I. ii. 27].

Jaimini continuing—"If you say even as a gloss it would be useless." [I. ii. 28] व्यर्थे स्तुतिरन्याय्येति चेत्।

He himself answers—"It will be useful as inducing men to a Vidhi in a popular way." [I. ii. 29] अर्थस्तु विधिशेषत्वात् यथा लोके।

Illustration.

"He sacrifices by a winnowing basket, because food is prepared by it." [Taittiriya Brahmana I. vi. 5] शूर्पेण जुहोति, तेनह्यन्नं क्रियते।

"If the duty of sacrificing by a winnowing basket were subject to the reason that the preparation of food is assisted by it, then it might be said that the Vidhi is for sacrificing with anything which assists the preparation of food, as for instance, fuel, *etc.* But the Vidhi is absolute that the sacrifice is to be made with the winnowing basket, no matter what service one expects from such basket. The statement of the service is merely a compliment, a mere popular praise to interest people in such a sacrifice. But it does in no way affect the obligation itself and the consequence of its non-performance. It is merely an Arthavada, not being included in the operative or the commanding clause, which is restricted to the use of the winnowing basket [Jaimini I. ii. 27] स्तुतिस्तु शब्दपूर्व्वत्वादचोदना च तस्य।"

One of the reasons in the enactment of the rules of Permanent Settlement States was said to be that it would induce the zamindars to treat their tenants well. If this reason be a part of the law, the permanent settlement would be void in the case of maltreatment of tenants by zamindars. It cannot be said that the statement of the reason is no part of the law contained in the Regulation. In the sense of the Mimansa it is an Arthavada just as the reason for using the winnowing basket at the sacrifice is an Arthavada.

Namadheyas.

Non-obligatory texts are such as put an interpreter in an exceedingly perplexing dilemma, as he is not to commit any violence to language while at the same time he must be faithful and stick to the purpose and object of the law. The difficulty arises when the literal construction goes against the declared object and purpose of the law. The construction which may obviate or minimise this evil, should be resorted to. According to Maxwell: "A sense of the possible injustice of an interpretation ought not to induce judges to do violence to well-settled rules of construction, but it may properly lead to the selection of one rather than the other of two possible interpretations."

Namadheya (non-obligatory) text may be illustrated by: *Shyenena abbicharan yajeta.* श्येनेन अभिचरन् यजेत। It means, 'let those who are so minded perform the ceremony of hurting or destroying his enemy by the *shyena* (hawk)'. The literal construction would be against the declared law, *viz.*, the attainment of spiritual or heavenly life.

Difference between Kumarila Bhatta and Savara Swami.

Kumarila Bhatta and others following him interpret the word *shyena* as not having any real meaning at all, but being a figurative expression meaning the name of a Yagya. They do not deny the said text to be a Vidhi, but allege that it is a mere nominal Vidhi or rather a parody of a Vidhi. But Savara Swami [II. i. i.] holds that it is not a Vidhi text at all, as the sanction of every Vedic Vidhi must be the Apurva sanction of realising heavenly bliss (*Swargakama Bhavana*), and this sanction being absent in this text, it cannot be a Vidhi at all.

तस्मात् भावार्थाः कर्म्मशब्दा अपूर्वं चोदयन्ति इति। अथ कस्मात् उभयं सूचितं भावार्थाः कर्मशब्दाः इति। उच्यते भवन्ति केचित् कर्मशब्दाः न भावार्थाः यथाश्येनैकचित्रादयः।

So he would read the imperative mood as an indicative mood and take the text as merely a description to the effect that Shyena Yajna is a ceremony to cause hurt to an enemy. The like texts were similarly treated by him. The text '*Pashukamo udvida yajeta*—(those who want to have animals are to perform sacrifice by *udvida*, was construed to mean

that the ceremony called vegetable Yajna means sacrificing for animals. The imperative mood was not taken by him as *Chodana* (command) with a sanction. He alleges that there is no sanction and that after performing a ceremony for animals, no animal is found to be forthcoming. So the object is not attained.

उपलम्भकानि चेंद्रियानि पश्वादीनां, न च पशुकामेष्ट्यनन्तरं पशवः उपलभ्यन्ते । अतोनेष्टिः पशु-फला ।

Sutra 2, Chap. IV, Book I of Jaimini also supports the above construction of Savara Swami by the assertion that "that text is Namadheya, of which in origination there is no Apurva sanction." **अपि वा नामधेयं स्यात् यदुत्पत्तावपूर्वमविधायकत्वात् ।**

This exceptional construction is not only the peculiarity of the Hindu system of interpretation, but it is to be found in the modern system as well, as is evident from the following observation of Maxwell:

Similarity with modern system.

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar; giving an unusual meaning to particular words; by altering their collocation; by rejecting them altogether; or by interpolating other words; under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language, and really give the true intention."(*x*)

Vidhi and Niyama distinguished.

The difference between obligatory texts and quasi-obligatory texts may now be considered. Vidhi and Niyama when applied to the transcendental matter, have a sense which is not quite the same which they have when applied to ordinary matters. The former when applied to the transcendental object of heavenly bliss, is defined as being a law by observing which one secures what is otherwise absolutely not securable by ordinary means; while the latter when applied to a transcendental object, is a rule by observing which one secures, though not what is absolutely otherwise not securable, what is partially not securable otherwise. For example, the Sruti that declares that paddy is to be unhusked by a particular process is a Niyama. There is nothing transcendental in the process and the unhusking may be done by other

(*x*) 3rd Ed, pp. 319-20.

means. The question arises what is there in it which is not otherwise securable ? The act of unhusking associated with a certain mantra forms the Niyama and not the act alone. The Apurva result which is secured by the recitation of the mantra is the transcendental part of the sanction. Karika has explained this transcendental sense in which the two terms Vidhi and Niyama are used : *Vidhiratyantamapraptau Niyamah pakshike sati, tatra chanyatra cha praptau parisankheti giyate.*

विधिरत्यन्तमप्राप्तौ नियमः पाक्षिके सति ।
तत्र चान्यत्र च प्राप्तौ परिसंख्येति गीयते ॥

Niyama only a directory rule.

Jaimini has clearly shown that Vidhi and Niyama when applied to ordinary matters in the form of applicatory Vidhis, are used in the sense of imperative rules and directory rules respectively. Thus Niyama has been used by Mimansakas as only a directory rule.

In some cases, such as where a Niyama is expressly made inflexible by shutting out provisions for substitution, it has the force of an imperative rule. Similarly, Vidhi is also sometimes lowered to the position of a Niyama as circumstances may require. *Niyamartha Kwachit Vidhi* नियमार्थःक्वचित् विधिः [Jaimini VI. iii. 16]. A Niyama may be said to be Guna Sruti (subsidiary or incidental statement) नियमार्था गुणश्रुतिः [Jaimini III. iv. 40].

Briefly put, when a Niyama enjoins the use of a thing for a certain purpose which is not available, any other thing which would serve more or less the same purpose may be used. In such a case it is not very far from being a quasi-obligatory text. One may not be fully justified in calling Niyama texts as quasi-obligatory, but it is not so with Parisankhya text, which simply declares that certain things are fit to be done.

Kratudharma and Purusha-dharma distinguished.

Again the Mimansakas make a distinction between Kratu Dharma and Purusha Dharma, as between a positive law and a quasi law. For illustrating the Purusha Dharma the following Adhikarana of Jaimini [III. iv. 2] सुवर्णधारणादीनां पुरुषधर्मताधिकरणम् । regarding the wearing of gold ornaments may be cited. "Bright gold (ornaments) are to be worn : his enemy becomes pale : he obtains beauty who wears beautiful clothes." [Taittiriya Brahman II. ii. 4. 6] तस्मात् सर्व्वं हिरण्यं भार्य्यं । सुवर्ण पत्र भवति । सुवाससा भवितव्यं रूपमेव बिभर्ति ॥ This Adhikarana lays down that the text gives only a direction that men engaged in solemn ceremony should wear gold ornaments and good dress. It is not a duty imposed on a man in connection with the

ceremony, but is a rule about his social conduct. The Sutra of Jaimini [III. iv. 20] on the subject is to the following effect:

"Not being connected as Prakarana (subordinate act to a thing positively enjoined), and being separable from it, texts like the above Vedic texts constitute only *Manushyadharma* (a duty of individual conscience)."

अप्रकरणे तु तद्धर्मः ततो विशेषात् ।

Savara Swami [III. iv. 20] says as under with regard to the above Sutra:

"Is this a subsidiary enjoined duty, or is it merely a duty of the man? The answer is, not being connected as Prakarana (subordinate act to a thing positively enjoined), and being separable from it, texts like the above Vedic texts constitute only Manushyadharma (a duty of individual conscience). Why so? Because it is not within the scope of the particular subject enjoined. Nevertheless it is a general direction, so it should be generally attended to."

तत्र किं प्रकरणधर्मः उत पुरुषधर्मः? इति संशयः। अत्र उच्यते, अप्रकरणे तद्धर्मः, ततो विशेषात्। पुरुषधर्मः एवञ्जातीय वा स्यात्। कुतः? प्रकरणाधीतात् विशेषोऽस्य नायं प्रकरणाधीतः यदि अप्रकरणे समाम्नातः सर्वप्रकरणधर्मः स्यात्। अप्रकरणे समाम्नातं न किञ्चित् विशेषं कुर्य्यात्। तस्मात् एवञ्जातीयकः पुरुषधर्मः इति।

In the same way, as regards the Adhikarana about the impropriety of conversing with a woman in dirty clothes [Jaimini III. iv. 7] मलवद्वासः संवाद् निषेधस्य पुरुषधर्म्मताधिकरणम्। it is laid down that the rule bears on the general moral conduct of a man [III. iv. 18] प्रागपरोधात् मलवद्वाससः। Again in the Adhikarana corresponding to Sutra 17: Chap. IV, Book III called *Avagoranadinam pumarthatadhikarana* (the topic of the sinfulness of assaulting, *etc.*, a Brahman, being a direction regarding common life), अवगोरणादीनां पुमर्थताधिकरणम्। [III. iv. 6.], the same principle is laid down शंयौ च सर्व्वपरिदानात्। The texts that provide for penance to those who assault a Brahman or otherwise maltreat him are provisions for the general duty of a man and have nothing to do with any particular ceremony enjoined. There is another Adhikarana as regards the duty of performing the Agnihotra ceremony [Jaimini II. iv. I] अथ यावज्जीविकाग्निहोत्राधिकरणम्। "There is a text *Yavajjiwamagnihotram juhoti* यावज्जीवमग्निहोत्रं जुहोति। *i. e.,* Agnihotra should be performed throughout life. With regard to this text the objector says that the expression 'for life' is connected essentially with the Agnihotra sacrifice itself. He means to say that if Agnihotra is not performed

throughout the lifetime of a man, it ceases to be Agnihotra. Jaimini's conclusion is that the instruction for performing 'for life' is an instruction for the man in connection with the Sruti कर्त्तव्यश्रुति संयोगात् । [II. iii. 2]. The Sruti by virtue of which the direction is made relates to the moral duty of a man. It says that if a man does not perform Agnihotra in the last stage of his life or before death, then he would suffer such and such consequences. Accordingly the conclusion is that the rule, so far as it speaks of whole life, is directory. It would be enough if a man perform the sacrifice before his death. Thus the distinction between Kratudharma and Purushadharma is really one between a rule of positive law and a rule of conscience. The Sastra writers would not derogate from the importance of the latter class of rules (rules of conscience) by calling them quasi-law. But all the same according to modern terminology the term "quasi-law" would be quite applicable to this class of law."

"The injunctions regarding the carrying out of sacrifices relate to specific and definite matters. Moreover, the rules regarding these have to be administered by certain constituted authorities *viz.*, the priests assembled on the occasion of each Yajna. They constitute a sort of ecclesiastical tribunal. So these rules relating to *Kratudharma* fulfil the conditions of positive law. On the other hand, what is called *Purushadharma* (duty of conscience) is something of a general character. So even from the Vedic point of view they could not be included within the definite and strict rules of sacrificial duty. No doubt they are of higher importance in social life than sacrificial duties. This is admitted by the Mimansakas. With reference to the first sutra of chapter I, Book IV, Savara Swami says that the purpose of the Kratu ceremony is subordinate, the purpose of Purusha is principal अङ्गं क्रत्वर्थः प्रधानं पुरुषार्थः । This is unobjectionable. Who can deny that moral law and spiritual law are higher than the municipal law? Still from a juridical point of view the latter is called the positive law or law proper, and the former are called only imperfect law or quasi-law." (*x*)

The same distinction between what is positive law and what is merely a moral precept has been set forth by our digest writers, Jimutavahana and Vijnaneshvara. Many regard it as a new idea introduced by these writers.

Arthakarma and Pratipatti-karma.

"There is another form in which the Mimansakas practically distinguish between a Vidhi and a quasi-vidhi. They make a distinction between what is called *Arthakarma* (work for the main purpose) and

(*x*) K. L. Sarkar's Mimansa Rules of Interpretation, p. 136.

Pratipattikarma (works merely incidental thereto). In fact, the distinction between the *Arthakarma* and *Pratipattikarma*, corresponds to what English writers on interpretation make between conditions which are essential to the intention of the Legislature and incidental conditions which are merely directory." Maxwell observes as follows :—

"The reports are full of cases without any such indications of intention ; in some of which the conditions, forms, or other attendant circumstances prescribed by the statute have been regarded as essential to the act or thing regulated by it, and their omission has been held fatal to its validity ; while in others, such prescriptions have been considered as merely directory, the neglect of which did not affect its validity or involve any other consequence than a liability to a penalty if any were imposed, for breach of the enactment. The propriety, indeed of ever treating the provisions of any statute in the latter manner has been sometimes questioned ; but it is justifiable in principle as well as abundantly established by numerous authorities."

"The distinction between *Arthakarma* (essential act) and *Pratipattikarma* (incidental act) is fully explained by Jaimini in Chapter II, Book IV, from sutras 10 to 12. The texts regarding the essential acts must be taken as obligatory texts, but those regarding the non-essential acts are, of course, of a quasi-obligatory character. The Mimansa writers have clearly distinguished between texts—obligatory, non-obligatory or, quasi-obligatory."

Manushya dharma and Arthavada.

Texts relating to Arthavada are not obligatory but those of Manushya-dharma (general morals) as laws of conscience are obligatory, and such a distinction between the two has been set forth by the Mimansakas. This text in the first Adhikarana of Chapter IV, Book III may be considered for the sake of illustrating this point : " The *Nivita* (putting the sacred thread across the left shoulder) is of men ; the *Prachinavita* (putting the sacred thread across the right shoulder) is of the *manes* ; the *Upavita* (putting the sacred thread round the neck) is of gods. He, indeed, makes a sign of god when he wears Upavita (the last mentioned way of using the sacred thread)." [Taittiriya Samhita 2, 511, 1] :

निवीतं मनुष्याणां प्राचीनावीतं पितृणामुपवितं देवानामुपव्ययते देवलक्ष्मीमेव तत् कुरुते इति ।

The question that arises in this text is whether the first two clauses relating to *Nivita* and *Prachinavita* should be read severally with the operative clause which indicates the duty of wearing, although this expressly relates to *Upavita*, or that these clauses are mere Arthavadas to show the importance of the *Upavita*. The answer is that the above

two clauses have been taken as Arthavada. This Adhikarna may well bear upon the construction of the texts of Manu describing several kinds of marriages one of which, the Brahma form, being taken to be preferable to the rest, may be taken as the Vidhi proper.

The Anritavada Nishedh-adhikarana अनृतवाद् निषेधाधिकरणम् as given by Sutra 12 and 13, Chapter IV, Book III, has discussed the text "Do not tell a lie"—"*Na anritam vadet*" नानृतं वदेत्। The point raised is whether this precept to avoid speaking falsehood is merely a moral precept (*Purushadharma*), or it is a positive law regarding the Darsapaurnamasi Yagya. The opponent wants to make it to be merely an Arthavada though of a general and permanent character (*Nityanuvada*). The conclusion is that it is neither an Arthavada nor a Purushadharma, but it is a part and parcel of the injunction of Darsapaurnamasi Yagya; and, as such, it is a positive Vidhi. K. L. Sarkar (p. 189) has summarised the effect of this conclusion thus: "As under our present criminal law if a man speaks a falsehood under an oath he is to be punished, but not so when he speaks a falsehood simply; so by making the text Kratudharma, the man who speaks a falsehood when engaged in a Yagya ceremony, is not simply liable to be condemned as a liar, but is liable to be punished by penance. This explains clearly the distinction between the Manushyadharma and the Kratudharma."

The rules to determine the persons to whom particular texts apply, the order in which they apply, the order in which texts mentioned in one connection are to be applied to other cases, and the necessary variations and omissions in making such applications would now be dealt with in the following sections.

The various tests to distinguish each of these classes into which Veda has been divided bring into display the general Mimansa principles regarding the application of texts, and there lies their importance:

Four tests to distinguish Namadheya:

Namadheya is that portion of the Veda which denotes the name of a sacrifice. There are four tests for its distinction. The **first** is *the avoidance of laksana* or deviation from the literal meaning (*a*). The term *udbhid* in the Vedic text: उद्भिदा यजेत पशुकामः (*b*) illustrates this point. Jaimini while dealing with *Udbhidadhikarana* raises a doubt whether the word *Udbhid* occurring in the text is the name of a sacrifice or the name of a material to be used at a sacrifice. "An objection is put forward that *Udbhid* means an axe by adopting the *Karanavyutpatti* or a derivation involving the instrumental case. In answer it is pointed out that even if an axe or anything of the sort

(*a*) Jaimini's Purva Mimansa 1. 4. Adhikarana 2. (*b*) Tandya Brahmana 19. 17. 3.

is supposed to be the literal meaning of the word *Udbhid*, in view of the juxtaposition of the root *Yaj*, meaning a sacrifice, it has to be interpreted to mean not 'an axe' but 'possessed of an axe' which is not its literal meaning. Therefore by taking the literal meaning of the word to be an axe, the interpretation of the text in question involves *Matvarthalaksana*, and when it is possible to understand a particular word in its literal meaning, it is improper to adopt a construction which would involve a deviation from the literal meaning, and therefore *Udbhid* ought to be treated as the name of a sacrifice." (*b*)

The **second test** is *the avoidance* of *vakyabheda* or multiplicity of principal clauses (*c*). Whether the word *chitra* in the text **चित्रया यजेत पशुकामः** is a nomenclature or denotes a material to be offered at a sacrifice. In the latter view it would follow that the two qualities of variegated colour and feminine gender—*chitratva stritva*—are enjoined, and as this inevitably leads to *Vakyabheda* (lit. the splitting up of a sentence) or a plurality of co-ordinate ideas which it is always the attempt of Mimansakas to avoid, the theory is upheld that *chitra* is the name of a sacrifice.

The **third test** is generally termed *Tatprakhyanyaya* (*e*). This principle determines whether the words *Agnihotra* and such others mean names of sacrifices or not, as in the texts: **अग्निहोत्रं जुहोति** and **आधारमाधारयति ।** When two texts refer to the same member of a sacrifice, the prior text lays down the auxiliary of the sacrifice, and the word referring to the same idea in the latter text must be deemed to be a nomenclature.

The **fourth test** is the Tadvyapadesa principle by the help of which words like *syena* or eagle and others occurring in texts like **श्येनेनाभिचरन् यजेत** (*f*) may be interpreted to mean sacrifices; as the complementary passage of this text is: 'Just as a *syena* pounces upon and takes away his prey, so does the sacrifice in question pounce upon and rake away the enemy.' The simile between the literal meaning of the word *syena* and the sacrifice in the command of which the word occurs, suggests that the said word means the name of a sacrifice.

Mantras are generally hymns addressed to gods at sacrifices and their function is to bring to mind a thing that ought to be performed *Anustheyarthaprakasana*. They are of three kinds: *Rig*, *Yajur* and *Sama*. This classification is not to be confounded with *Rig Veda*, *Yajur Veda* and *Sama Veda* and this difference has been discussed

(*b*) C. Shankararama Shastri-Fictions p. 55. (*c*) Jaimini's Purva Mimansa 1. 4. Adhikarana 3.
(*d*) Taittiriya Samhita, 2. 4. 6. (*e*) Jaimini Purva Mimansa 1. 4. 4. (*f*) Ibid 1. 4. 5.

by Jaimini in the Chapter of Purva Mimansa [II. 1. Sutras 35, 36 and 37] while dealing with the relative weight of *upakrama* or the beginning, and *upasamhara* or the close. These words have been defined in these maxims :

(1) तेषामृग्यत्रार्थवशेन पादव्यवस्था,

(2) गीतिषु सामाख्या and

(3) शेषे यजुश्शब्दः

The mantras composed in metre are termed *Rks*; *Saman* is applied to the different methods of chanting recognised in the Vedas and the whole mass of mantra portion goes by the name of *Yajus*.

Function of Arthavada to eulogise or condemn acts referred to in Vidhis.

Arthavada forms an indispensable part of a Vidhi. As to how an Arthavada is made complement to the Vidhi is based on the Mimansa principle that when an Arthavada text occurs near about a Vedic command, the complementary Arthavada will be deemed to praise or eulogise the performance of an act and in case of a prohibitory act it may be deemed to condemn the prohibited act.

Illustration of condemnatory and commandatory Arthavadas.

This principle is illustrated by the following texts:

वायुर्वै क्षेपिष्ठा देवता, वायुमेव स्वेन भागधेये-नोपधावति, स एवैनं भूतिं गमयति । (*a*)

'Wind-God is the swiftest deity ; one approaches him by his own good luck ; and He alone brings him prosperity' which follows the Vidhi text—

वायव्यं श्वेतमालभेत भूतिकामः । (*a*)

A man desirous of prosperity must sacrifice a white beast for *Vayu*.

The following text illustrates a Pratisedha followed by a condemnatory Arthavada :

'Silver ought not to be given in the *barhis* sacrifice. Rudra wept, and his tears became silver. A giver of silver will witness weeping in his house before the expiry of a year.' (*b*)

Division of Arthavada.

It is a settled fact that Arthavada has no independent authority of its own. In order to estimate the value of Arthavada the threefold distinction of Arthavada into *Gunavada*, *Anuvada* and *Bhutarthavada* must be considered.

विरोधे गुणवादः स्यादनुवादोऽवधारिते ।
भूतार्थवादस्तद्धानादर्थवादस्त्रिधा मतः ॥ (*c*)

(*a*) Taittiriya Samhit II. 1. 1. (*b*) Ibid 1. 5. 2. (*c*) Anandagiri on Brahmasutra Bhasya under 1. 3. Sutra 33.

When an Arthavada text is on the face of it opposed to commonsense, it is said to be a Gunavada; when it is a mere repetition of a thing already known it is an Anuvada; and the rest of the Arthavadas are known by the name of Bhutarthavada.

The two texts ग्रावाणः प्लवन्ते (*b*) and गावस्सत्रमासत (*c*) 'stones float on water' and 'kine performed the *satra* sacrifice' illustrate the first of the three classes of Arthavadas given above. अग्निर्हिमस्य भेषजम् (*d*) 'Fire is antidote for snow.' illustrates the second class. The last is illustrated by the story of Sunahsepha and similar other narrations.

Mimansakas who are staunch believer in the theory: as the sole purpose of the Veda is the commanding of acts, such of those as do not compel the performance of an act are invalid: आम्नायस्य क्रियार्थत्वादानर्थक्यमतदर्थानाम् (*e*), are obliged to deprive Arthavada texts of their natural meaning and to accept a forced interpretation. In whatever way Arthavadas may be construed to harmonise with the theory of infallibility of the Vedas, it is an admitted fact that Arthavadas played an important part in the development of rules contained in the Vidhi texts by way of extension, restriction or modification of their scope. An Arthavada sometimes alters the meaning of a command to which it is supposed to be subservient. Sometimes instead of restricting, the Arthavada extends the meaning of of a Vidhi as is evident from the Smriti text of Atri (Verse 52):

Extent of modification of Vidhi by Arthavada.

अपुत्रेणैव कर्तव्यः पुत्रप्रतिनिधिस्सदा ।
पिण्डोदकक्रियाहेतोर्यस्मात्कस्मात्प्रयत्नतः ॥

Only by a sonless man shall be made a substitute for a son by all possible efforts for the purpose of the offering of libations and water.

The text simply says that a man destitute of a son shall be entitled to adopt. The plain meaning of the word 'son' in the above text has been expanded by the following Arthavada.

पुत्रेण लोकाञ्जयति पौत्रेणानन्त्यमश्नुते ।
अथ पुत्रस्य पौत्रेण ब्रध्नस्याप्नोति विष्टपम् ॥

"A man conquers the world by a son, by a son's son attains immortality, and by a son's grandson attains the world of sun." (Manu IX. 137)

The effect of reading the Vidhi and Arthavada texts together is that when a man is possessed of a son or a grandson or a great-grandson he is not entitled to adopt a son.

(*b*) Taittiriya Samhita 1. 3. 13; Cf. अप्लवन्त ग्रावाणः (*c*) Ibid 7. 4. 18.
(*d*) Ibid 7. 4. 18. (*e*) Jaimini Purva Mimansa 1. 2. 1.

Such instances of modification, extension or restriction may be multiplied. But the theory is that no such alteration of Vidhi by Arthavada is possible and this principle is enunciated in *Hetuvannigadadhikarana* of Jaimini (o) which has been the subject of much reference as regards the validity of the adoption of an only son The text of Vasistha is :

Mimansa theory: A Vidhi cannot be modified by an Arthavada.

न त्वेकं पुत्रं दद्यात्प्रतिगृह्णीयाद्वा, स हि सन्तानाय पूर्वेषाम् ।

'One shall not give or receive an only son in adoption, for he is for the continuation of the line of his ancestors.' (Ch XV. Sutra 3 and 4). Mr. Mandlik based its interpretation on the principle of Hetuvannigad-adhikarana but conceived it wrongly as laying down that any command followed by a reasoning clause is absolutely null and void. The point round which the whole discussion turns is the meaning to be given to the text : शूर्पेण जुहोति, तेन ह्यन्नं क्रियते । (a) 'One shall perform Homa by the winnow, for by it food is made.'

"The question discussed is whether the Homa under question ought to be performed only with the winnow which is expressly mentioned in the commanding clause of the text, or whether the Homa can be performed with a pounding rod, a jar or a spoon or any other implement used in the preparation of food on account of the applicability of the reasoning clause to such other materials. In conclusion, the former view is upheld principally on the ground that it is not right just to accept a deviation from the literal meaning in a commanding text, and that when the choice lies between straining a word in a Vidhi and that in an Arthavada, the latter ought to be preferred. If we are to strain the language of the Vidhi text in the light of the Arthavada, the word 'winnow' has to be taken in extended signification. If we choose to strain the Arthavada in the light of Vidhi, we have to presume that the reason for the winnow being the subject of Homa is not the capacity to produce food in producing food inhering in the winnow. In the result, the food-productive capacity of the winnow is referred to as recommendatory rather than by way of an independent reason in support of Vidhi. It, therefore, follows that the scope of any commanding clause is not to be extended by reason of a succeeding reasoning clause, and that the reasoning clause ought to be restricted in its operation to the particular object which comes within the purview of the commanding clause. Such being the principle enunciated in the Adhikarana, it is no authority for the position that all commanding clauses followed by reasoning clauses are infructuous. It rather establishes that all reasoning clauses following commands are infructuous

(o) Jaiminis Purva Mimansa I. 2. 3.

On the application of this principle to Vasistha's text, Mr. Mandlik's view is wholly untenable. All the same it ought to be admitted that whenever it suits their purpose, the Mimansakas mitigate the effect of the principle of this Adhikarana by introducing refined technical distinctions and adopting a liberal interpretation of words occurring in a Vidhi text."(a)

SECTION 2. ADHIKARA VIDHIS

Adhikara Vidhis (Vidhis relating to title and capacity), which are rules regarding the right to perform prescribed acts have been treated in the sixth chapter of the first *Shataka* of Jaimini's work. The Utpatti Vidhis impose on men duties to be performed in the shape of sacrificial acts, while Adhikara Vidhis prescribe conditions as to how a man is entitled or has the right to perform sacrifices ; and are intended to show to what persons particular Vidhis are applicable.

As regards Adhikara Vidhis, Jaimini does not discuss only the question as to who are entitled to perform sacrifices, but also matters relating to rights of property. As a sacrifice requires the use of things including movable and immovable property, Jaimini had to discuss the question of a man's right to dispose of one thing or other by way of gift. So he discusses the principle of proprietory right with regard to the Viswajit Yagya in Chapter VIII, Book VI. These discussions will be dealt with later on.

Principle of exclusion from inheritance.

It is the general notion found in the Hindu Dharmasastras that *a right implies a duty*, and so where a man cannot perform the duty, he cannot acquire the right. Therefore, the right of inheritance and succession in the Hindu system of jurisprudence depends upon the man's capacity and ability to discharge certain duties belonging to the family, which he is to represent by succession. If he is physically unfit to discharge such duties, he is excluded from the right of inheritance. Jaimini's Adhikaranas regarding the qualifications of the sacrificer and the conditions to which he is subject are essential in following the principles of the Sruti law of exclusion from inheritance and of the principles creating disabilities. Thus the blind, the lame and the dumb are not qualified, as they are incapable of doing the main ceremony and all its Angas, because the omission even of one Anga will invalidate the ceremony. Therefore, it is evident that the germ of the principle of exclusion from inheritance is contained in Jaimini's Sutras.

The third Adhikarana of the first chapter of the sixth book of

(a) C. Sankararama Fictions p. 67-69.

Competency of women to perform Vedic ceremonies.

Jaimini explains the position of woman in ancient India, laying down that women are competent to perform ceremonies:

यागादिषु स्त्रीपुंसोरुभययोरधिकाराधिकरणम् ।

The objection is: "Women have no money. What money they get becomes the property of the husband, the moment they acquire it. Women are bought and sold and are on a level with chattels." [VI. i. 10.]

द्रव्यवत्वात्तु पुंसांस्यात् द्रव्यसंयुक्तं क्रयविक्रयाभ्याम् अद्रव्यत्वं स्त्रीणां द्रव्यैः समानयोगित्वात् ।

The answer is, "Women possess Yagas equally with men. Women have control over money, and men require their sanction to make gifts. The custom of making a gift to the bride's father at the time of marriage cannot make the transaction a sale and purchase. The same number of kine are presented to the fathers of brides. If it were a transaction of sale, the price would vary with the merit of the girl. The gift is made because it is prescribed by the Smriti that it is a dharma."

फलोत्साहाविशेषात्तु ।
अर्थेन च समवेतत्वात् ।
क्रयस्य धर्ममात्रत्वम् । [Jaimini VI. i. 13–15.]

It is also noteworthy that the husband and the wife should jointly perform the Yagya.

Matters discussed by Adhikara Vidhi.

Adhikara Vidhis deal with matters relating to the obligation of performing Kamya Yaga; for example, the text "If in the middle of the performance of a Kamya Yaga, the desired fruit is obtained, this is no reason that the sacrifice is to be discontinued." The question of a proper substitute for a prescribed material has also been treated in Book VI. The nature of the ceremony is not altered because of the substitution, nor can a ceremony be omitted if the prescribed material be not available, as a proper substitute is permitted. But there can be no substitute for the essential things in a sacrifice. The Devata, the fire, and the mantra, can have no substitute. One sacrificer cannot be replaced by another except in the case of the Satra Yaga, if one of the 17 Yajamanas (sacrificers) die in the middle of the ceremony. In this case the deceased sacrificer will enjoy the fruit, for he alone can get the benefit who works from the beginning of the ceremony. The substitute must be as much like the original as is possible. It is the basis of the principle of Hindu Law that the adopted son must be

the reflection of a son. Trifling defects in prescribed transactions as are unavoidable may be overlooked, but radical defects are not to be condoned. For example, where the *Purodasha* is wholly burnt, the Yaga is to be performed afresh ; in case it is slightly burnt the Yaga may be continued. These are the conditions under which a man's right to perform a sacrifice is to be exercised. In many cases they suggest the character of the conditions which may apply to the exercise of a person's civil rights.

Status of women and Sudras.

Some important matters on the subject of Adhikara (status) after discussing what it constitutes may now be considered. The aphorisms of Jaimini on the question of the status of the women and the Sudras are more liberal than later Brahminical writings. He lays down [VI. i. 8]: "In the opinion of Badarayana, all without any distinction of class who desire heaven can perform sacrifices. A woman, therefore, is included because there is no class distinction."

जातिं तु बादरायणोऽविशेषात्, तस्मात् स्त्र्यपि प्रतीयेत जात्यर्थस्याविशिष्टत्वात्

In fact, in the case of married couples, it is laid down that a married couple with means must join in the same act of sacrifice by virtue of an express text **स्ववतोस्तु वचनादैककर्म्यं स्यात्।** [Jaimini VI. i. 17].

As regards Sudras, the subject is treated in 7th Adhikarana beginning with Sutra 25 Book I, Chapter VI. K. L. Sarkar [p. 195] has observed: "No doubt by this Adhikarana it is settled that by virtue of a Brahmana text of Rishi Atreya, a Sudra is excluded from the Agneya Yagas; but the reasons given do neither involve any contempt for the class nor attribute any inferiority to them. The reasons are that a Sudra is not connected with any Agneya ceremony, and that there is an express text declaring the competency of three classes only in matters of Yajna. In fact the general tenor of all the aphorisms from the beginning of the chapter is to the effect, that *prima facie* all rational beings are entitled to the benefit of a sacrifice, if they appreciate the object of it. The first Adhikarana lays down that there must be thinking men to perform a sacrifice, and that the acts of sacrifice mechanically performed secure no object. This Adhikarana shows that the qualification for sacrifice is ability to perform it rationally and a consciousness of its object. The general enunciation *prima facie* entitles men of any class to perform a sacrifice provided he be not positively disqualified. The author declares a Sudra to be disqualified by virtue of some express texts. We thus find that according to Jaimini the presumption is in favour of qualification until the contrary is shown. So in all cases of mixed castes it is not proper

to hold that men belonging to such castes are disqualified; further, the disqualification of a Sudra seems to be limited only to the Agneya ceremony."

SECTION 3. KRAMA VIDHIS

Krama Vidhis are rules regarding the order in which prescribed acts are to be done and have been dealt with by Jaimini in the fifth chapter of the first Shataka. They indicate the order in which rules and injunctions are to be performed. The relative importance of things is shown by the order in which they are mentioned and as such they constitute in themselves a principle of interpretation called Krama.

Three chief Kramas.

(1) The order of succession is sometimes declared by express Sruti, which is then called *Sruti-Krama.*

(2) When the order is determined by the sense of the passage in the absence of an express Sruti, it is called *Artha-Krama* (determination of order by sense).

(3) When the order in which the texts appear gives the indication, it is *Patha-Krama* (succession by reading)

Sruti-Krama.

Jaimini defines Sruti-Krama in the first Sutra of Chapter I, Book V in these words:

"What is to be done before and what after is best determined by the indications in Sruti, Sruti being the authority" श्रुतिलक्षणमानुपूर्व्यं तत्प्रमाणत्वात् ।

Artha-Krama.

Artha-Krama is explained in the next Sutra thus: "It is also fixed by the sense." अर्थाच्च ।

Patha-Krama.

Patha-Karma, that is of fixing the order by the relative position of the texts has been dealt with in Sutras 4 to 7 of the same chapter of the book.

Prabritti-krama.

There are three more Kramas of which Prabritti-Krama (order by discretion), only may be mentioned, as it is of importance. It relates to the case in which the things are required to be performed simultaneously, but convenience requires them to be performed successively. It is the subject of the fifth Adhikarana, the Siddhanta Sutra of which is as follows:

"Of those which are to be done simultaneously, the order is determined by discretion with reference to minor considerations, as these form an index." [V. i. 8].

प्रवृत्या तुल्य कालानां गुणानां तदुपक्रमात् ।

Principle of Krama and Vyavahara law.

Strictly speaking, things are to be done simultaneously, yet there is no harm in doing them successively. But where certain things occur simultaneously, simultaneous performance is imperative. The rules regarding the order in Vyavahara law relating to the question of succession of heirs illustrate the importance of this principle. With regard to the succession of a woman's children to her self-acquisition, Jimutavahana refers to the text of Manu, " when the mother is dead, let all the uterine brothers and the uterine sisters equally divide the maternal estate "

जनन्यां संस्थितायान्तु समं सर्वे सहोदराः ।
भजेरन् मातृकं रिक्थं भगिन्यश्च सनाभयः ॥

In this text it is not clear whether uterine unmarried sisters and uterine brothers are to take the property simultaneously or one class after the other ; the word " equally " does not remove this doubt but only means equality among the inheritors. Thus it is not the case of Sruti-krama or Artha krama. Some argue on the basis of another text, which lays down that the right of the daughter should be preferred to the son, that the text referred to above must be construed as giving preference to unmarried sisters over brothers. Jimutavahana refutes this contention on the ground that the text declaring the preference of the unmarried daughter to the son relates to Yautuka (property acquired at the nuptial fire) only. So according to him the principle of Arthakrama is not applicable in this case. The Pathakrama is also not applicable, because the words " brothers " and " sisters " occur in the same sentence. The text is then to be interpreted as laying down simultaneous succession of brothers and unmarried sisters. He further points out that although the words " brothers " and " sisters " are not in the *dwanda samasa* (conjunctive compound), which would have made the case absolutely clear, still the use of the conjunctive particle *cha* (and) shows that brothers and sisters are placed on the same footing by this text. This discussion goes to show the importance of the rules regarding sequence in the Vyavahara law.

SECTION 4. ATIDESHA, THE PRINCIPLE OF REFERENCE

Jaimini deals with the principle of Atidesha in chapters VII and VIII and defines it thus :

" If what is prescribed as a duty with regard to one object, applies to another object, this is called Atidesha."

अन्यत्रैव प्रणीतायाः कृत्स्नाया धर्मसंहृतः ।
अन्यत्र कार्य्यतः प्राप्तिरतिदेशः स उच्यते ॥

He applies this principle to the performance of sacrifices. The Prakriti is that sacrifice every Anga of which is described by Sruti itself in detail. The Vikriti is a sacrifice, the Angas (details) of which are not described by the Sruti. By the principle of Atidesha it must be inferred that all the Angas prescribed for the Prakriti are by implication intended for the Vikriti also For instance, all the Angas of the daily Agnihotra are expressly prescribed by the Sruti. The monthly Agnihotra is prescribed by the Sruti, "Monthly Agnihotra should be performed." मासमग्निहोत्रं जुहोति । But the Angas (details) of it have not been mentioned anywhere. Apurva can be produced only by the performance of ceremony with all its Angas. It is, therefore, necessary to find the Angas of the monthly Agnihotra ceremony In some cases the Atidesha is made by the Sruti itself, as in the case of Ishu Yaga (x)

Explanation of Savara Swami.

Savara Swami explains Atidesha thus :

"Atidesha takes place when a duty prescribed in one place is taken out of that place and is applied elsewhere ; as, for instance, when having laid down that Devadatta is to be entertained with rice, meat, soup and pudding, one says that Yajnadatta is to be similarly entertained. The following Sloka embodies the principle :

"When duties are transferred from one standard (Yajna) to another of the same character, to serve as duties therein, this is a case of Atidesha. That *Atidesha is of two-fold kind, either by name or* by statement. The former is of three species, by name of action, that of the ceremony accompanying it, and that consisting of a derivative term. The latter is of two kinds, by an express direction and by an inferential process."

अतिदेशो नाम ये परत्र विहिता धर्म्मा, तमतीत्य अन्यत्र तेषां देशः यथा देवदत्तस्य भोजनविधिं कृत्वा शालिसूपमांसापूपैः देवदत्तो भोजयितव्यः इति तमेव विधिं यज्ञदत्तेऽतिदिशति देवदत्तवत् यज्ञदत्तो भोजयितव्यः इति । श्लोकमपि उदाहरन्ति ।

प्रकृतात्कर्म्मणो यस्मात्तत् समानेषु कर्म्मसु ।
कर्म्मप्रदेशो येन स्यात् सोऽतिदेश इति स्थितिः ॥

स च नाम्ना वचनेन वा तत्र नाम त्रिविधं अतिदेशकं, कर्म्मनाम, संस्कारनाम, यौगिकम्, इति । वचनं पुनर्द्विविधं प्रत्यक्षश्रुतं, आनुमानिकञ्च ।

Book VII of Jaimini treats of Atidesha generally, but in Book VIII a special kind of Atidesha has been dealt with, which cannot be vaguely presumed. It must be specifically indicated by a definite relation .

(x) K. L. Sarkar—Mimansa Rules of Interpretation, p. 201.

(*vishesha*), and that relation is defined thus:

"It is a relation in which one thing contains the indication of another thing and deriving its force from that other would become an incident of it." [VIII. i. 2.]

यस्य लिङ्गमर्थसंयोगादभिधानवत्।

The second Adhikarana in Book VII lays down the important principle that Atidesha takes place between two Vidhis or two ceremonial duties belonging to the same class [Jaimini VII. i. 2.]

समानमितरच्छ्येनेनेतिश्रुत्या इषौ श्येनीयविशेषधर्मातिदेशाधिकरणम्।

Achara-kanda illustrates Atidesha.

Achara-kanda of the Smritis gives numerous illustrations on this subject. For example, it is laid down there that offering of water with sesamum, ghrita and honey, which is to be made after the Pinda in Parvana Sradha, is to be performed like the Argha ceremony of the same Sradha; that is, as in the latter case the offering is to be made to six ancestors separately, so in the former. अक्षय्योदकदानन्तु, अर्घदानवदिष्यते। Another instance of this is the direction in the Sruti that the Sradha ceremony of maternal grandfathers should be done in the same way as of father and paternal grandfather.

मातामहानामप्येवं श्राद्धं कुर्याद्विचक्षणम्।

"The Parvana Sradha in honour of the paternal ancestors is in the nature of Prakriti to the Parvana Sradha in favour of maternal ancestors, which is the Vikriti of the former. This fact is of great importance in the Dayabhaga school, in which the number of Pindas given enters into reckoning in settling the order of succession, but is not necessarily decisive in all cases. A Prakriti is not in all respects equal to its Vikriti, it being after all but a copy." (p. 203.)

"According to the author of Tantra-ratnakara not only the manner of doing duties, but also the duties themselves can be implied by Atidesha."

प्रकृतात्कर्म्मणो यस्मात् समानेषु कर्म्मसु।
धर्म्मोतिदिश्यते येन सोऽतिदेश इति स्मृतः॥

Jaimini confines the principles of Atidesha chiefly to the practice that the Vikriti Yaga is done in a manner similar to that of the Prakriti Yaga, to which the Vikriti Yaga relates. This principle the Smriti writers have extended to matters of Sradha and the like.

As for example, the Sradha ceremony done during the new moon is regarded as the Prakriti, while the other Sradha ceremonies are

Classification of Atidesha.

regarded as Vikriti of the Prakriti. But later writers have extended application of the principle yet further. They have classified the principle of Atidesha thus:

1. *Shastratidesha* शास्त्रातिदेश—reference as regards the principle.

2. *Karyyatihesha* कार्य्यातिदेश—reference as regards the action.

3. *Nimittatidesha* निमित्तातिदेश—reference as regards the cause.

4. *Sangatidesha* सङ्गातिदेश—reference as regards the denomination.

5. *Rupatidesha* रूपातिदेश—reference as regards the form. [p. 204.]

Atidesha may be compared with our present Code of Civil Procedure, which provides general rules of procedure which are also adopted in miscellaneous cases by express reference or otherwise. That a rule found to be good with regard to one case is applicable to other analogous cases is derivable from the principle of Atidesha, but the principle of analogy should not be strained and forced. To do so would be nothing but an abuse of Atidesha. Chudamoni says regarding sections 31-2-4 of the Dayabhaga:—

"Although the property relates to the case of a superseded wife, yet it may be so assumed in the present case also, conformably with the maxim, that the sense of the law, as ascertained in one instance is applicable to others also, provided there be no impediment." It is an illustration of a practical application of Atidesha to the general requirements of the positive civil law."

Another such illustration is furnished by Dattaka Chandrika (para 36, section 2), where matters applicable to the Kshetraja have been applied to Dattaka sons. But where a brother's son or a co-wife's son is said to be equal to a son, it merely means that for certain purposes they are as beneficial as a son of the body. The Prakriti (pattern) Yaga and the Vikriti (the derived) Yaga must be of the same genus (samana). In the case of an adopted son he is the reflection of a legitimate son. So the rules regarding the rights and status of a son must apply to him by Atidesha, just as the rules of the Prakriti Yaga apply to its Vikriti.

Similarly the principles which govern the law of gifts may be applied to the law of wills which is of a later development. So in *Tagore* v. *Tagore* (*x*), their Lordships of the Privy Council have held that a bequest to an unborn person is not valid just as a gift to

(x) 1872 I. A. Sup. Vol. 47

(y) Page 254, 3rd Ed.

an unborn person is not valid. But in the application of the principle of Atidesha in this particular case there must be some limitations (*Badha*). Under the Dayabhaga a gift cannot be revoked, but a will is revocable. The law of gifts should not be absolutely applied to all such bequests in favour of unborn persons; for, certain persons may not be in existence during a testator's life time, but the testator is bound to make provision for their maintenance. So it may be alleged that a provision made by a will for the maintenance of such persons, though not in existence at the time of the death of the testator, is valid by virtue of the express text of Manu regarding the duty of maintaining those who are born and those who may be born. Both the Mitakshara and the Dayabhag schools follow this text implicitly. The case of *Tagore* v. *Tagore* has not pointed out any exception to the above principle, and such an exception would mean the application of Atidesha subject to limitation (*Badha*). In modern legislation, when a general Act is expressly incorporated into a special one this is analogous to an Atidesha by Sruti. That in working out such Atidesha certain adjustments are to be made is evident from the remarks of Maxwell (*y*) :

"Where a general Act is incorporated into a special one, the provisions of the latter would prevail over any of the former with which they were inconsistent. It may be added also that when an Act on one subject, such as highways, incorporates some of the provisions comprised in another relating to a different subject, such as poor rates, it does not thereby incorporate the modifications of those provisions which are subsequently made in the latter."

SECTION 5. UHA, THE PRINCIPLE OF ADAPTATION

Jaimini discusses Uha principle in his ninth book in the sense of an adaptation from a model. He chiefly uses the word 'Uha' with reference to cases in which a mantra used in Prakriti has also to be used in a Vikriti, and the name of the deity has to be altered to suit the Vikriti. In modern writing this term Uha has been given an extended application. It is applied not only to changes of particular words but also to supplying of ellipses, which are undoubtedly indicated by the text of a sentence. Briefly put, Uhya (subject of Uha) is what is necessarily implied but not expressed.

Savara Swami divides Uha into three classes, relating to the Mantras, to the Samaveda hymns and to the consecration of things. Kumarila Bhatta objects to the propriety of this classification. He says, 'Uha means reasoning. It is the same, no matter to what objects

it is applied—to Mantra or to the hymns or to the consecration.' (Taptika)

त्रिविधश्चोह इत्येतद् युक्तं । कथं? उह नाम वितर्कणा। सा चैकरूपा संस्कारेषु क्रियमाणा सैव सा । न तस्या: कश्चिद्विशेषः ।

He further explains that the object of Uha is to ascertain and adjust the required sacrificial acts (*angas*) of material limbs. The above object is introduced by the first Sutra, chapter I, Book IX: "A sacrificial act is the chief thing, that is based on an injunction—material things consecrated in its connection are employed to promote the sacrificial intention."

यज्ञकर्म प्रधानं तद्धि चोदनाभूतं तस्य द्रव्येषु संस्कारस्तत्प्रयुक्तस्तदर्थत्वात् ।

Uha in relation to Arthavada and Niyama.

An Arthavada has already been explained to be the statement of a reason with reference to a Vidhi by the Adhikarana, the Hetuvannigadadhikarana, and it has been stated by Jaimini in Sutra 52, Chapter II, Book I So in some cases of applying the Vidhi a necessity may arise to overlook the reason, or a Vidhi may remain and the reason may not exist. Dealing with the statement of reason in this way, it may constitute a case of Uha (use of sound discretion). But the main use of Uha is in connection with Niyama Vidhis, which are generally of diverse character and have sometimes the character of imperative Vidhis, while at other times they are only directory. In Vidhirasayana, Appya Dikshita says, "There is a variety of Niyama Vidhis. They are indeed old Niyamas, but it is not possible to bring them all under the definition of "*Pakshike sati*" being partly transcendental. For instance, in some cases, out of different means to carry out an action, to fix on one of them is a Niyama. In some cases out of different acts arising from the same means, to fix on one such act is a Niyama. In some cases the two are combined."

हेतुः कुत्रापि कार्ये क्वचन तदुभयं कुत्रचिद्विध्युपात्तम् ।
विध्या पृष्टं नियम्य क्वचिदुभयविधिं पाक्षिकत्वेन दृष्टं ॥
तस्यैव प्रत्यनीकं क्वचिदपि कुहचित् पाक्षिकं
नैव दृष्टं नाना रूपं तदित्थम् नियम विधिगतं दुर्ग्रहं लक्षणेन ॥ विधिरसायने॥

Vedic and Laukika Niyama.

There is greater evidence of stiffness and inflexibility in the Vedic than in the Laukika (worldly) Vidhi. This is due to the simple fact that in the Vedic Vidhis the Apurva sanction makes even a Niyama almost imperative. So Niyama texts of the Vedas can be slightly modified by Uha as regards the name of the Devata or the number and gender of

words. But Laukika Niyamas are chiefly directory. As regards the Smritis a Niyama creating a substantive right is an imperatively restrictive rule, but when a Niyama regulates the manner of doing a duty or the manner of expressing a right, it is more or less of a directory nature. For example, the rules that one should marry his daughter before she attains puberty or that one should adopt a boy of such an age have been held to be merely of a directory nature. Uha has full sway over the application of such rules. By Uha-Vichara such rules are relaxed in cases where relaxation becomes necessary.

Uha-Vichara is only applicable to rules more or less of a directory character, but cannot touch imperative Vidhis. For instance, the direction that one must observe the Ekadashi fasting, is an imperative Vidhi with respect to certain classes of persons. But that one should break fast in a certain manner on the next day is a Niyama. By Uha the former rule cannot be relaxed while the latter can.

Uha-Vichara corresponds to modern construction most agreeable to justice and reason.

The modern phrase called "construction most agreeable to justice and reason" is equivalent to the Uha-Vichara of our Mimansakas. Maxwell says, "In determining either what was the general object of the Legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most agreeable to convenience, reason, justice and legal principles should, in all cases open to doubt, be presumed to be the true one. An argument drawn from an inconvenience, it has been said, is forcible in law; and no less force is due to any drawn from an absurdity or injustice." [p 264, 3rd Ed.] Again he observes: "sense of the possible injustice of an interpretation ought not to induce judges to do violence to well-settled rules of construction, but it may properly lead to the selection of one rather than the other of two possible interpretations. Whenever the language of the Legislature admits of two constructions, and if construed in one way, would lead to obvious injustice, the courts act upon the view that such a result could not have been intended unless the intention had been manifested in express words." [p. 277, 3rd Ed.]

K. L. Sarkar has elaborately treated the subject thus: "In short, it is a fixed principle that an equitable and reasonable construction should be resorted to in all cases when it is possible. The term Uha is not used by Jaimini in the extended sense of such equitable and reasonable construction. The immediate subject of his construction was the Vedic Revealed Law. So it was not permitted to him to sanction principles of equitable and reasonable construction except

within very narrow limit."

"But the Smriti law, though it is also constructively a' revealed law, is not on the same footing with the Vedic Revealed Law. It deals with *Laukika* (worldly) affairs. It has often to adjust itself to new social wants and growing usages. Hence the Smriti-writers broadly assert almost in the same strain and state that, 'Decision should not be based only on the Sastras. By an unreasonable judgment there is loss of Dharma.' (Vrihaspati). No noubt the Smriti writers will not allow equitable and reasonable considerations to override the clear text of law. So they say, 'Smriti is of greater authority than Artha Sastra' (Yajnavalkya). 'When the rules of sacred law and of Artha Sastra are at variance, he must discard the latter and follow the former' (Narada). But it is insisted on that, 'Avoiding carefully the violation of either the sacred law or Artha Sastra he should conduct the trial attentively and skilfully (Narada)."

"Thus in the above Smriti text the principle of Uha-Vichara is taken as co-extensive with what we call in modern times equity and good conscience. It is clear that the expression 'Artha Shastra' in the above text means equitable principle or commonsense principles; although in a narrower sense the word means relief, which is the subject of a litigation. From that narrow sense, it naturally passes into the sense of equitable relief, and thence into the general idea of equitable or common sense principles."

In Vyavahara law Artha Sastra means the relief sought for in a litigation, which is allied to the second meaning given in the Amarakosha; and it is practically the same as considerations of equity, the first meaning given to it being the rules of morality and prudence.

अर्थशास्त्रं चाणक्यादि प्रणीतं नीतिशास्त्रं तत्पर्यायः। दण्डनीतिः इत्यमरः।

SECTION 6. BADHA, THE PRINCIPLE OF BAR

'Badha' may be defined to be exclusion by reason of repugnancy. Primarily it means barring a thing owing to inconsistency. Jaimini has treated this subject in the tenth chapter of his work and uses the principle chiefly with reference to cases where Angas or sub-ceremonies are to be introduced from the Prakriti (standard Yaga) into a Vikriti (moulded Yaga), the injunctions as to the details of which are not complete.

Badha with regard to positive texts.

In case of omissions in the performance of a Vikriti Yaga, the Angas or the sub-ceremonies are borrowed from Prakriti Yaga, but the sub-ceremonies which are inconsistent or out of place in the Vikriti Yaga

cannot be followed. For instance, in the Rajsuya Yaga plain ground is directed to be taken as the Vedi for the Homas, while in the Darsapaurnamasi the Vedi should be erected by digging with spades *etc.* There is a Badha of the particular rule regarding the erection of the Vedi in the Darsapaunamasi Yaga, in extending its application to the Rajsuya Yaga. It is Badha by reason of express text. The Krishnala Nyaya (black bean maxim) is another instance.

Badha with regard to negative texts.

"When there is a negative ordinance prohibiting a thing, it is to prevail notwithstanding that there is an Atidesha which by implication enjoins the thing. For instance, there is a rule that all sacrifices partake of the character of Darsa and Paurnamasi Yagas. The result is that all the rules of Darsa and Paurnamasi Yagas are applicable to the Pasu Yaga also But there is a text which says that the Aghara and the Ajyabhaga Homas need not be made in the Pasu Yaga. Therefore, these Homas need not be made in the Pasu Yaga, though in the absence of the prohibitory text they would have to be made on account of the rule which lays down that all Yagas must partake of the character of Darsha and Paurnamasi The importance of the principle under consideration will appear in connection with the position, rights and duties of adopted sons who are, by a general rule, declared to be an efficient substitute for an Aurasa son, but whose rights and capacities in some measure vary by some special texts from those of an Aurasa son." [K. L. Sarkar p. 215]

Divisions of Badha.

In his learned treatise Mimansa Valaprakasha. (Mukunda Shastri Ed.) Sree Bhatta Sankara gives two-fold divisions of Badha (1) *Prapta Badha* and (2) *Aprapta-Badha* and defines the former thus:

1. Prapta-Badha.

"Prapta Badha occurs where from Atidesha (reference) of general Sastra and the like a knowledge is engendered to the effect that a thing is inappropriate in all matters. यत्रातिदेश सामान्यशास्त्रादि जनिते स्थाने सर्वविषये वा मिथ्येदमिति प्रत्ययान्तरं भवति स प्राप्तबाधः। It means a Badha (exclusion by repugnancy) of a matter which must be taken as worthless because of some rule or principle of the ordinary Sastra pointing, among other things, to its worthlessness."

1. If there be two casual Vidhi texts, one preceding the other and clashing with each other, the one that precedes is barred by the one that follows पूर्वं परेण as in the case of the Apachheda maxim.

2. That which is needed bars what is not needed निष्प्रयोजनं सप्रयोजनेन बाध्यते।

3. That which slightly occurs is barred by that which amply occurs अल्पं भूयसा ।

4. That which is opportune bars that which is not opportune सावकाशं निरवकाशेन ।

5. That which is in the nature of a para is barred by what is in the nature of the whole अङ्गं प्रधानेन ।

6. That which serves a practical purpose bars those which are of an ethical purpose, universal or casual काम्येन नित्यस्य नैमित्तिकस्य ।

7. That which is directly taught bars that which is obtainable by reference अतिदेशिकेनोपदेशिकस्य ।

2. Aprapta-Badha.

" Aprapta-Badha has been defined to be a Badha in which the sense of inappropriateness of a particular text or of a particular proposition arises from its comparison with another particular text or proposition weightier than itself." (Mimansa Valaprakasha p 131).

Illustrations.

1. A Sruti of a doubtful character is barred by a Sruti which is free from doubt असन्दिग्धश्रुतिबाधः ।

2. A Linga which is more cogent bars that which is less cogent लिङ्गेनापि लिङ्गं बाध्यते ।

3. Similarly a Sruti bars a Smriti श्रुत्या स्मृतिर्बाध्यते ।

4. A Sruti bars Achara also श्रुत्या आचारोबाध्यते ।

5. An absolute Smriti without reference to any popular reason bars one that is based upon a popular reason अदृष्टार्थस्मृत्या दृष्टार्था स्मृतिर्बाध्यते ।

6. An approved Achara bars an unapproved Achara आप्ताचारेणानाप्ताचारो बाध्यते ।

7. An unobjectionable Achara bars an objectionable Achara अविगीताचारेण विगीताचारो बाध्यते ।

8. A Smriti of the character of a Vidhi bars one of the character of an Arthavada यत्र तु लिङ्गादौ श्रुतिकल्पना प्रतिबन्धात् ज्ञानोत्पत्तिरेव प्रतिबाध्यतेऽसावप्राप्तबाधः इति ।

9. A Smriti of a doubtful character is barred by one free from doubts सन्दिग्धमसंदिग्धेन ।

10. That which serves a purpose immediately bars that which is of a remote service आरादुपकारित्वं सन्निपातित्वेन ।

11. That which is multifarious in meaning is barred by that which has a single meaning अनेकार्थत्वमेकार्थत्वेन बाध्यते ।

12. The application of a general clause is barred by the presence of a clause in the nature of *res gestae* अनारादस्वाधीतं प्राकरणिकेन बाध्यते ।

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13. A rule of procedure is barred by a mandatory rule प्रयोगवचनाश्रयं चोदकाश्रयेन बाध्यते ।

14. A manifest sense bars a sense by context श्रुत्या लक्षणा बाध्यते ।

15. A primary sense bars a secondary sense लक्षणयापि गौणी बाध्यते ।

16. That which has a single indication is preferable to what has many indications एकलक्षणया अनेक लक्षणा बाध्यते ।

17. An indication of an inherent nature bars one which is not so निरूढलक्षणया अनिरूढलक्षणा ।

18. That which indicates an action is to be preferred to what merely indicates a capacity लक्षणयोरपि कार्यलक्षणया धर्मलक्षणा बाध्यते ।

19. If you can fill up an ellipsis by an expression which occurs in a passage, you cannot go beyond it अनुषङ्गेणाध्याहारो बाध्यते ।

20. A Niyama Vidhi bars an Apurva Vidhi नियमविधिना अपूर्वविधिर्बाध्यते ।

This rule of bar is not a little striking. An Apurva Vidhi is the highest Vedic Vidhi, and a Niyama Vidhi is only a Vidhi of a subordinate character. How can the latter bar the former? The answer is that the rule is enunciated from the Smriti point of view. In the Smriti law the *drishta* (object of sense) is of greater importance than adrishta (supersensuous matter). Therefore, a Vidhi of transcendental sanction has to yield to one of worldly sanctions. From the above rules of Badha we notice that the application of the principle, Badha, is one of the means of adjusting conflicting texts or conflicting considerations. When two texts which are apparently conflicting are capable of being reconciled, they must be so reconciled. This is an axiom. Again where two texts are in direct conflict and they are incapable of reconciliation, both of them lose their force, and one is at liberty to accept the one or the other text at his option. This is also an axiomatic principle. But there is a third consideration, in which, of two conflicting texts or conflicting considerations one is to override the other. This is called Badha. It means that when one of two conflicting things has a presumption in its favour, it bars the other which can claim no such presumption." (p. 219)

Savara Swami's treatment of conflicting texts

Savara Swami in his commentary on Sutra 14, Chapter III, Book III has fully discussed the three ways of dealing with conflicts and has shown that where two contradictory texts are both of equal force, there only is contradiction proper (Virodha). When one of them possesses

greater force than the other, the former supersedes the latter, and this is called Badha. In cases of apparent conflict where the texts cover different grounds and are yet compatible with each other, there is neither Virodha nor Badha.

Reconciliation of Smriti texts.

When there is a conflict between the Smriti texts, no presumption in favour of one writer in preference to another can be raised or that one Smriti text cannot create a Badha of another. In reality two conflicting texts are rarely in direct contradiction to each other, as they, on a given subject, are supposed to be derived from and to conform to one and the same missing Sruti text. Therefore, a direct conflict between two Smriti texts cannot be assumed. The principle of option cannot consequently apply to apparent contradictions. The digest writers are, therefore, bound to reconcile the varying Smriti texts somehow or other.

SECTION 7. TANTRATA AND PRASANGA

"Tantrata (etymologically meaning extension) involves the principle of avoiding repetition of acts, when a single act would serve the purpose."

"Prasanga denotes incidental duties. It imports the principle that the performance of the major duty dispenses with the performance of minor duties which are involved in it."

Avapa is the reverse of Tantrata. It is the repetition of a thing many times to make it useful to many more people. The principle of these two rules is generalised and briefly put by modern jurists thus: "An act enjoined by the Sastras need not be performed more than once." This principle may go some way in giving the widow of the adopter a right to adopt a second time when her adopted son dies leaving a widow with no issue, as the adoptive widow having the permission to adopt is half his body. This principle has no bearing to simultaneous adoption, which has been held to be invalid, although Dr. Siromoni says that the principle applies to such a case.

CHAPTER VI

MIMANSA RULES REGARDING THE SMRITIS AND USAGES

SECTION I. INTRODUCTION

Sruti and Smriti law.

In the Hindu legal system we have the Sruti and the Smriti; the Sruti which is the revealed law is more authoritative, and from it is derived the Smriti law. They may be likened to the Statute Law and the Common Law of the Western system of jurisprudence. The Statute Law is in set language and is in itself authoritative just like the Sruti Law; while the Common Law or the Customary Law may or may not be in writing and is not in itself absolutely authoritative. The Smriti Law which is associated with the customary Law of the Hindus is almost of the same character. The principles of construction, such as the axioms, the general principles, Sruti, Linga, Vakya and Prakarana, are based on considerations of the characteristics and properties of language. They mainly bear on the interpretation of the Vedic Law, and are similar to the rules of construction of the statutes. Jaimini has framed additional rules for construing the Smriti Law and Prayoga or Usage Law which are based on different considerations altogether. The same is the case with the construction of the common Law and the customary Law in the English system of legal literature.

Case law and statute law.

In these days, the Common Law is practically the same as the Case-law. As regards statute law there are various rules of construction, such as, the principles of literal construction. construction by context, special rules of construction *etc.*, but a different set of rules and principles is required for Case-Law. They are: (1) A ruling or a decision of a court is to be interpreted so as to make it agree with the provisions of Statute on the subject. (2) If it be at variance with the statute, it must be disregarded. (3) The ruling or decision is to be held good only so far as the actual question raised in the case required it. (4) In interpreting a decision the question is not what the judge intended but how far his judgment is based on the facts of the case, whereas in statute law the intention of the Legislature is the main factor,

(5) Lastly the customs and usages must be antique, certain and reasonable.

Jaimini's treatment of Smriti & Usage law.

Jaimini treats of the Smriti or customary law in the *third chapter of the first book* and his treatment is the same as that of the English system referred to above. Though some of the Smriti texts and even some texts of the digest-writers took the position of the Vedic Law in point of authority to be interpreted by the principles of construction of the Divine Statute Law, yet Jaimini treated them as customary Law. He treats the Smriti and the Usages on one and the same basis.

Principles of interpretation in Smriti.

The following principles of interpretation relate to cases of apparent or real conflict of legal doctrines; the undermentioned texts touch but a fringe of the subject of interpretation and are reproduced below:—

1. "When two Smrit's disagree, that which follows equity as practised by the people of old, should prevail. Smriti is of greater authority than rules of Artha-Sastra (equitable principles based on rules of morality and prudence." (Yajnavalkva II. 21.)

श्रुत्योर्विरोधे न्यायस्तु बलवान् व्यवहारतः ।
अर्थशास्त्रात्तु बलवद्धर्मशास्त्रमिति स्थितिः ॥

2. "Avoiding carefully the violation of either the sacred law or the rules of Artha Sastra, he should conduct the trial attentively and skilfully." (Narada I. 39.)

धर्मशास्त्रार्थशास्त्राभ्यामविरोधेन यत्नतः ।
संपश्यमानो निपुणं व्यवहारगतिं नयेत् ॥

3. "Where the rules of sacred law and the rules of Artha-Sastra are at variance, he must discard the latter and follow the rules of sacred law." (Narada I. 39)

यत्र विप्रतिपत्तिः स्याद्धर्मशास्त्रार्थशास्त्रयोः ।
अर्थशास्त्रोक्तमुत्सृज्य धर्मशास्त्रोक्तमाचरेत् ॥

4 "In case of conflict of Smritis, decision should be based on reason. Custom is powerful and overrules the sacred law" (Narada I. 40.)

धर्मशास्त्रविरोधे तु युक्तियुक्तो विधिः स्मृतः ।
व्यवहारो हि बलवान् धर्मस्तेनावहीयते ॥

5. "The first rank (among legislators) belongs to Manu, because he has embodied the essence of the Veda in his work; that Smriti (or text of law) which is opposed to the tenor of the laws of Manu is

not approved." (Vrihaspati.)

वेदार्थोपनिबन्धृत्वात् प्राधान्यं हि मनोः स्मृतम् ।
मन्वर्थविपरीतायाः सा स्मृतिर्न प्रशस्यते ॥

6. "Decision should not be based only on the Sastras By an unreasonable judgment there is loss of Dharma." (Vrihaspati)

केवलं शास्त्रमाश्रित्य न कर्तव्यो हि निर्णयः ।
युक्तिहीने विचारे तु धर्महानिः प्रजायते ॥

7. "The law of Manu is authoritative in the Satya Yuga, the law of Gautama in the Treta, in the Dwapara Sankha-Likhita, and in the Kali the Law of Parasara." (Parasara I. 24)

कृते तु मानवा धर्मास्त्रेतायां गौतमाः स्मृताः ।
द्वापरे शङ्खलिखिताः कलौ पराशराः स्मृताः ॥

8. "When there is a conflict between the Veda and the Smriti and the Purana, the Veda should prevail; (as between the two latter) Smriti is superior."

श्रुतिस्मृतिपुराणानां विरोधो यत्र दृश्यते ।
तत्र श्रौतं प्रमाणन्तु तयोर्द्वैधे स्मृतिर्वरा ॥

The following general rules, which specifically bear on the character and interpretation of the Smriti texts and usages, form the basis and lie at the root of the subject of interpreting the Hindu Law. The seven rules as contained in Book I, chapter III Adhikaranas 2, 3, 4, 6, 7, 8 and 9 of Jaimini are given below:

1. "The authoritativeness of the Smriti law is a matter of inference, because the promulgators of it are the same as those of the Vedas." [Jaimini I. iii. 2.]

2. "If there be a direct conflict between a Smriti text and a Vedic text, the latter must prevail." [I. iii. 3.]

3. "If a Smriti text is based on a gross motive which is inconsistent with the spiritual motive of the Vedic law, then it is to be ignored" [I. iii. 4.]

4. "Established and approved usage has the force of law without reference to the causes which brought it into existence." [I. iii. 7.]

5. "If there be two conflicting usages, that which has the support of the Sastra is to prevail." [I. iii. 9.]

6. "A rule of usage or a rule of Smriti must be taken to represent the short, simple and general proposition, such as, a Vedic Vidhi" [I. iii. 8.)

7. "Authorized terms and expressions belonging to foreign

(Mlechchha) dialects are to be taken in the sense attached to them according to those dialects" [I. iii 6.]

Seven principles of construction of Smriti and Usage law. These seven principles of construction of Smriti and Usage law may be put in the form of maxims thus:—

I. *Smriti-pramanyadhikarana*—The Smriti is presumed to be authoritative and binding.

II. *Sruti-prabalyadhikarana*—In the event of conflict between Sruti and Smriti, the latter fails.

III. *Dushtamulaka Smriti apramanyadhikarana*—A Smriti text, the origin of which can be traced to perverse motives, is not binding.

IV. *Padartha prabalyadhikarana*—Usage has the force of law if not found to have originated in any perverse motive.

V. Between two conflicting usages (either as regards the application of word or in the matter of conduct) that which is conformable to the Sastra is to prevail.

VI. *Samaxya-Sruti-kalpanadhikarana*—Usage or Smriti must be reduced to the short, simple and general form of a Vedic Vidhi.

VII. *Mlechchha-prasiddha-padarthadhikarana*—An authorised matter expressed in foreign words must be understood in the sense that those words carry with the foreigners.

Sutras relating to these seven principles of construction. "The first principle (which is the first Adhikarana of the chapter) follows from the following two Sutras."

Objection: "Duty arises from the Vedic commands, all outside the Vedas must be disregarded." [I. iii. 1.]

धर्मस्य शब्दमूलत्वात् अशब्दमनपेक्ष्यं स्यात् ।

Answer: 'The authoritativeness of the Smriti law is a matter of inference, because the promulgators of it are the same as those of the Vedas.' [I. iii. 2.]

अपि वा कर्तृसामान्यात् प्रमाणमनुमानं स्यात् ॥

The second principle is contained in the third Sutra of the chapter and forms the second Adhikarana of it. (I. iii. 3.)

'A Smriti is, however, to be disregarded in case of conflict, the presumption in its favour arising in the absence (of conflict.).'

विरोधेत्वनपेक्षं स्यात् असति ह्यनुमानम् ।

The third principle is worked out by commentators from the fourth Sutra of the chapter and is the third Adhikarana of it. The Sutra runs as follows:

"(A Smriti is to be disregarded) also when an (improper) reason is seen." हेतुदर्शनाच्च। All the commentators agree in taking *hetu* (reason) to mean a *dushta hetu* (an improper reason).

The fourth principle is embodied according to some commentators in Sutras 5, 6 and 7. But according to Kumarila Bhatta, Sutras 5 and 6 form a separate Adhikarana (topic). He maintains that Sutra 7 alone embodies the principle stated under the fourth head. This Sutra 7 is as follows:

"But usages not admitting of the (vitiating) cause (*viz.*, perverse motive) prevail."

अपिवा कारणाग्रहणे प्रयुक्तानि प्रतीयेरन्।

Kumarila Bhatta's view will be fully stated later on.

The fifth principle, regarding conflicting usages is properly the subject of Sutras 8 and 9 and forms the fifth Adhikarana of the chapter.

Objection: 'In them (usages) no marks of contradiction (to Sruti) being visible, they would be of equal force and capable of conflict (with each other)."

तेष्वदर्शनाद्विरोधस्य समाधिप्रतिपत्तिः स्यात्।

Answer: "(Then such as are found) in the Shastra as auxiliary to it must prevail."

शास्त्रस्था वा तन्निमित्तत्वात्।

The sixth principle which is the subject of the eighth Adhikarana is introduced by the 15th Sutra affirmed as Sutra 16 and is discussed at length by Sutras 17 to 23.

Sutras 15 and 16 are as follows:

Objection: "As an inference is to be made, then all that has to be done is to join the inference to make anything authoritative."

अनुमानव्यवस्थानात्तत्संयुक्तं प्रमाणं स्यात्।

Answer: "But a duty must be general, and the following of that characteristic (of being general), is fit for the rule of law (to be formulated)."

The seventh principle forming the sixth Adhikarana is deduced from Sutra 10 of the chapter, as already stated. It runs as follows:

"Matters incidentally authorised hold good in the absence of any indication to the contrary,"

चोदितन्तु प्रतीयेताविरोधात् प्रमाणेन।

Commentators take it as referring to foreign words and foreign usages, apparently because the Sutra would otherwise be useless For,

matters incidentally authorised, if not of an exceptional character, must hold good even without such a Sutra.

The above are the Sutras in which the seven rules affecting the interpretation of Smritis and Usages are contained (*o*).

Equivalent modern principles relating to these 7 rules.

"The *Smriti pramanya* maxim corresponds to the idea that a rule of law is taken to be authoritative on the presumption that it must have been recognized by those who had legislative authority. The *Sutra-prabalya* maxim corresponds to the principle that if a decision or dictum is contrary to the express law of a statutory nature, the latter overrides the former. The *Dustamulaka-Smriti-apramanya-adhikarana* corresponds to the rule that an usage or custom must be reasonable in order to be accepted as law. The *Padartha-prabalya-adhikarana* tallies with the maxim "usage is the text of interpreter." The *Sastra-prasiddha-padartha-adhikarana* and the *Mlechchha-prasiddha adhikarana* are no doubt of a special character, but they are reasonable and proper. *Smriti-samanya-adhikarana* virtually corresponds to the principle that an usage is valid in so far as it is clear and certain."

SECTION 2. AUTHORITATIVE NATURE OF SMRITIS PRESUMED

Vedic origin of Smriti.

The Smriti is presumed to be authoritative and binding. The Sutras relating to this first rule, as given above, provide the reason for the authoritativeness of the Smritis, "because the promulgators of the Smritis are the same as those of the Sruti." The better reason would have been the supposed one that every Smriti text is only a reproduction of some lost Sruti text. Whatever the reason may be, a Smriti text is supposed to have its origin in Vedic principles. In other words, Hindu Civil Law has been made dependent upon religious injunctions This is not peculiar to the Hindu system of law alone but is the common feature of all ancient and also of some modern communities. In the infancy of society the governing power rested generally with the priests and the people and not in any monarchical institution. The people were naturally guided by their elders or leaders who were mostly the priests. The elders combining their priestly functions, were called patriarchs. The Rig Veda clearly exhibits this patriarchal system of the Indo-Aryans (the Hindus). The Vedic Rishis were mostly *Prajapatis* or patriarchs. The impress of the ancient Vedic patriarchs, Manu, Atri, Angiras, *etc.*, is still found in the institutes of Hindu Law. So Jaimini lays down that the authoritativeness of these institutes is a

(*o*) K. L. Sarkar, 227-230.

matter of inference, as they were promulgated by the Rishis of the Vedas.

Law and religion blended together.

"The above is clearly exhibited by the Vedas, specially, the Rig Veda. The highest aspirations and the highest ideals of a nation are embodied in its religion. Therefore, a rule of conduct which is associated with religion and has the sanction of it, more effectively sways the conscience of individuals in the shape of positive law, than it otherwise would do. As Rishi Jaimini understands the Vedas, the pith and marrow of them is the command requiring man to seek heavenly bliss and heavenly purity. To have the Vedas as representing this command at the top of the civil law is a great benefit to such law .... Although in early stages of society religion is mixed up with civil law, there is a gradual tendency of the civil law being disintegrated from the religious law. And this is shown clearly by the history of the Hindu Law. When Jaimini wrote or pronounced the Aphorisms, there had been a partial disintegration to some extent, but the civil law was yet dependent on the religious law in a great measure. Later on, when the Nibandhas (the digests) were written, such as the Mitakshara and the Dayabhaga, the disintegreation had been almost complete. But up to the present time it is not fully complete, nor is it desirable that it should be so. For the reverence to the Vedic command 'Thou shalt aspire for a heavenly life,' however weak or theoretical it may have become, is sure to have some influence in the proper development of the Hindu Law." (*p*)

SECTION 3. VEDIC TEXTS MORE AUTHORITATIVE THAN SMRITI TEXT

In case of conflict between a Smriti text and a Vedic text, the latter should prevail:

This rule is of little practical importance, as the Vedas contain very little of positive law, and the chances of collusion between the Smriti and the Vedic text are very rare. But still some do exist, specially as regards Achara law (rule of individual conduct and religious ceremonies).

Oudambari Nyaya illustrating the conflict.

Oudambari Nyaya illustrates such a conflict between a text of Katyayana Smriti and a Vedic text. The conflict as regards positive civil law is sometimes noticeable, *e.g.*, several Smriti texts have declared that in cases of partition among the brothers, the elder brother is to get a larger share than the younger. There is a Vedic text that Manu divided his property among his sons in equal shares. The influence of the Vedic text prevailed, and the law is that all brothers get equal shares in their paternal property.

(*p*) K. L. Sarkar p. 223.

Conflict between Smriti and Puranas.

The Mimansa Aphorisms have not touched this point of conflict between the Smritis and the Puranas. Some of the Smriti writers acknowledge the Puranas as a factor of civil law. For example, Vyasa says, "where there is a conflict between the Sruti, the Smriti and the Puranas, the Sruti must prevail; but in a conflict between the latter two, the Smriti must prevail."

श्रुतिस्मृतिपुराणानां विरोधो यत्र दृश्यते ।
तत्र श्रौतं प्रमाणन्तु तयोर्द्वैधे स्मृतिर्वरा ॥

The general Mimansa rule that usage has the force of law gives the true position of the Puranas in the domain of positive Civil law. Puranas are ancient records of certain usages, and as such they ought to be consulted in connection with such usages. Says Professor Wilson :

"The Puranas are not authorities in law, they may be received in explanation or illustration, but not in proof."

स्मृतेर्वेदे विरोधेतु परित्यागः यथा भवेत् ।
तथैव लौकिकं वाक्यं स्मृतिर्बाधे परित्यजेत् ॥

The proposition as laid down by Vyasa that in case of a conflict between the Smriti and the Puranas, the former prevails, is unquestionable. But this must be subject to the rule relating to the superiority of usages and customs contained in the Puranas.

SECTION 4. SMRITIS BASED ON PERVERSE MOTIVE

The authority of the Smriti is vitiated if based on a perverse motive :

The Sutra relating to this rule, as given above, does not contain any word signifying perversity but speaks of motive only. This, in fact, would be giving it a wider sense, if it meant that wherever the statement of a reason was found in a Smriti text, that text would not be regarded as a Vidhi. V. N. Mandlik took such a wide view of the Sutra. He says as regards the text of Vasishtha, "But no one should give or receive an only son, for he saves the man (from *put* पुत् or hell).

Mandlik's wide view.

"This text on the most approved principles of criticism must also be treated as a recommendatory one, in as much as it contains a precept that is intended for a certain specified purpose. It is a rule of the Purva Mimansa that all texts supported by the assigning of a reason are to be deemed not as Vidhi but simply as Arthavada ; so it follows

that it has no obligatory force whatever. He adds :

"Savara Swami constructs an Adhikarana (a topic) on this head, which he calls *Hetubannigadadhikarana* (a topic in regard to texts which contain a clause containing the reason of the precept) out of five Sutras of Jaimini. Ch. I, quarter II, 26-30" He further says :

"This principle is made still clearer by Savara Swami in his comments on Jaimini's Sutra 4 of Ch. I, quarter III." (*x*). In the Full Bench case of the Allahabad High Court : *Beni Prasad* v. *Hardai Bibi* (*y*), the broad view of this Sutra as taken by Mandlik was approved. But the comments of Savara Swami and other commentators who followed him, are to the effect that the Sutra should be construed as laying down that when some selfish design is found to underlie a Sruti text, its authority should be ignored. They are all unanimous that the Sutra in question has in view the Smriti text relating to *Visarjana-homa*. The meaning of the text is that a priest called *Adhvaryu* takes a piece of cloth connected with a sacrifice called *Visarjana-homa*, and it is enjoined that the cloth should be long enough to cover the whole post. The commentators observe that the reason of this last text is to accommodate the *Adhvaryu* priest by supplying him with a long piece of cloth वैसर्जहोमीयं वासोऽध्वर्युं गृह्णाति । So it is argued by them that selfish motive being seen, there can be no presumption in favour of the Smriti text in question. Madhavacharya has put this in very clear terms in his Nyaya. The Nyaya, therefore, does not mean that when a reason is attached to a Smriti text, it is invalidated, but that where an unworthy selfish motive is detected to lie at the bottom, then alone no presumption should be made in favour of its validity, or, in other words, in favour of its being consistent with the Vedas. The logic of this principle is evident. The sanction of the Vedic obligatory texts is the Apurva sanction of securing heavenly purity. When a selfish motive is the cause of a rule, that rule cannot be in consonance with this high ideal. Hence such a rule must fail.

Savara Swami and other commentators do not take such wide view.

Visarjana homa.

Validity of the text in case of selfish motive is questionable.

"Kumarila Bhatta takes the expression "*Hetudarshanat*" to mean, from seeing a fundamental reason different from the fundamental reason of the Vedic Vidhis, *viz*, the attainment of heavenly bliss.

इतश्च न प्रमाणत्वं मूलहेत्वन्तरे क्षणात् ।
व्यभिचारे हि नोत्पत्तिरर्थापत्यनुमानयोः ॥

(*x*) Mandlik's Hindu Law *p*. 499.
(*y*) 14 All. 67.

"Any Vidhi in order to be valid must have directly or indirectly this object in view. Bhatta says that this is not the case in texts grounded on considerations of error, covetousness and plausible argument which even the highest intelligence cannot prevent."

कचित् भ्रान्तिः कचिल्लोभः कचिद्युक्तिविकल्पनम् ।
प्रतिभाकारणत्वेन निराकर्तुं न शक्यते ॥

SECTION 5. AUTHORITY OF USAGE UNINFLUENCED BY IMPROPER CAUSE OF PERVERSE MOTIVE

An usage holds good if not influenced by any improper cause or perverse motive :

This proposition is covered by the *Padartha Prabalya* Adhikarana. *Padartha* is an established thing or established fact. Usage also is an established fact. A usage is not properly a usage, unless it be an established fact. So the Adhikarana well expresses the principle enunciated, the constituents of which have been given in the three following Sutras :—

"Non-contradiction lies in non-condemnation by the wise : is that your position ?" शिष्टाकोपेऽविरुद्धम् । [Jaimini I. iii. 5].

"Not that, because there are the limits of the Sastras." न शास्त्रपरिमाणत्वात् । [Jaimini I. iii. 6].

"But the thing is, cause not accruing, a usage is to hold good." अपि वा कारणाग्रहणे प्रयुक्तानिप्रतीयेरन् । [Jaimini I iii. 7].

Savara Swami's view of the Sutras.

"Savara Swami takes all the above three Sutras together as forming one topic (*Adhikarana*). According to him the proposition in the first Sutra, 'Non-contradiction lies in non-condemnation by the wise' is thrown out as the suggestion of the sound conclusion on the subject, which is formally enunciated in the concluding proposition, *viz.*, 'no (improper) cause accruing, a usage holds good." Thus, according to this view the intermediate Sutra: 'Not so, because there are the limits of the Sastras' embodies an objection (*Purva paksha*), which is refuted. The sense of the whole, according to this view is this : Says the objector, 'You cannot in your zeal to uphold matters outside the Vedas (*ashabda*) go so far as to say that the mere fact of a want of positive condemnation by well-informed personages is enough to enable you to take a thing to be not contradicted by the Vedas, and therefore fit to be presumed as valid.' The objector continues, 'No, certainly you cannot hold so, because where then will be the rules of your Sastra prescribing this and that limit?' To this the affirming side answers: 'Well, there may be the limits of the Sastra to the

contrary, but when a usage has become a settled fact, it must hold good if no improper cause is found at the bottom of it.'"

This is the logical effect of Savara Swami's view of the Sutras. He gives an illustration, The Vedas have it: "Make the Vedi and then recite the Vedas" वेदं कृत्वा वेदिं करोति। An usage has sprung up of performing *Achmana* (sipping water with suppressed breath) between the act of making the Vedi and of reciting the Vedas. No doubt it contravenes the rule of procedure as given in the Vedas, but it cannot be discarded. This illustration narrowed down the broad proposition in favour of usage. It does not throw any light on the broad features of the rule and proceeds upon the supposition that usage must be one necessitated by Sastric or religious considerations; and all that is meant by overruling the objection which requires a usage to be within the limits of the Sastras is, that when such limits are only in the nature of rules of procedure, they are to be ignored in favour of usages of a substantive character.

Kumarila Bhatta differed from Savara Swami.

Kumarila Bhatta realising that the illustration would whittle down the rule formulated by Savara Swami explained the three Sutras thus. He maintains that the first two Sutras form one topic—the topic of religious or ceremonial usages, and that the last Sutra forms by itself a separate topic relating to worldly usages. He says "the first one is the refuted objector (*Purva paksha*) and the second is the final conclusion" (*Siddhanta*). According to him the objector suggests that religious practices and doctrines not condemned by the Buddha teachers should prevail; that against this contention the affirmative side maintains that Baudha practices and doctrines though not condemned by the wise cannot hold good, because they are not within the limits of the Vedas. Having thus safeguarded the rules of religious practices, Bhatta unhesitatingly affirms that the object of the third Sutra is freely to allow worldly usages affecting business, subject only to the limitation laid down by the *Drishtamulaka* Adhikarana, *viz.*, that a gross or perverse motive, such as covetousness and the like, vitiates a text. At the first sight it appears to be a stretch of language to understand the words '*Karana-grahana*' (not taking cause) to mean not presenting any improper cause. But all the commentators have taken it in such a sense, so that there cannot be any question about it. How and wherein Bhatta differs from Swami is stated by Pandit Rameshwar Suri the author of the Subodhini Vritti in his note to the 7th Sutra, Chapter III, Book I [p. 243.]

"The Pandit in the said note first explains the reason why a usage

Rameshwara Suri explains the difference.

is taken to be authoritative. The reason suggested is indeed a subtle one It is said that the validity of an established usage (*Prasidha padartha*) requires no proof, because proof is necessary only of that which seeks recognition. That which has been recognised needs no proof."

प्रमेय गत विरोधलोचनैव प्रमाणविरोधबुद्धेरुदयेन प्रमेयविरोधावगमकाले एव तयोर्बलाबलस्याप्यवगमात्तत एवनिर्णये प्रमाणबलाबलस्येव नैराकांक्षेनाऽनादरणीयत्वात् ।

The note proceeds: "In this matter the Vartikkara (Bhatta) has constructed the Adhikarana differently, as the Purvapaksha assumed in the Bhashya (Savara) is not proper. The first of the Sutras is not a part of the conclusion, but is the Purvapaksha against the view that such of the sayings of Sakya (Buddha Deva) as are not disapproved by the wise should be accepted as authoritative. According to Kumarila the next Sutra "that cannot be because there are limits of the Sastra" is the *Siddhanta* (conclusion.)"

अत्र वार्तिककारोऽन्यथा अधिकरणमारचयतिस्म भाष्योक्तपूर्वपक्षस्यातिमन्दत्वात् । शाक्योक्ताऽहिंसादिवचनं प्रमाणमप्रमाणं वेति संशये शिष्टाकोपेऽविरुद्धमिति चेदिति पूर्वपक्ष सूत्रम् । अस्यार्थः । शिष्टस्य श्रुतिस्मृतिविहितस्य प्रकोपे ऽयाकोपाभावे अविरुद्धं तत् प्रमाणं भवत्विति । सिद्धान्तयति न शास्त्रपरिमाणत्वादिति ।

Pandit Rameshwara Suri after giving some illustrations of the above position, from Bhatta's work proceeds to explain Bhatta's view of the 7th Sutra '*apivakarana etc.*' as follows:

Seventh Sutra establishes the validity of usage

' This Sutra '*apivakarana etc.*' is an independent Adhikarana to establish the validity of *sadachara* (unobjectionable usages), the other side having denied the validity of each."

अपि वा कारणाग्रहणे प्रयुक्तानि प्रतीयेरन् । इति सूत्रं तु सदाचार प्रामाण्यबोधनार्थमधिकरणान्तरत्वेन व्याख्यातवान् । सदाचारोऽप्रमाण प्रमाणं वेति संशये ।

The validity of these is established subject to the condition that they are not vitiated by motives directed against the general religious sense of the Aryas, this condition being implied by the words *Karanagrahane* (not admitting of such motives *etc. etc.*)

This is Pandit Rameshwara's explanation of Bhatta's view. In the very words of Bhatta, it may also be considered. He first shows that even sound rules of conduct embodied in Buddha books cannot

be accepted by reason of the Adhikarana. There he says:

"If the purpose of these rules of conduct can be clearly made out by some other Sastra of our own, then being so made out, those inferior Baudha Sastras become useless." Then Bhatta proceeds: "Therefore, teachings outside those expressly contained in the Vedas and the like cannot be disregarded as unproved; hence the Sutra "*Apiva karanagrahana etc.*" [Tantravartika, Benares Ed. p. 127.]

यदा शास्त्रान्तरेणैव सोऽर्थः स्पष्टोऽवधार्यते ।
तदा तेनैव सिद्धत्वादितरत्स्यादनर्थकम् ॥

तस्माद्यावत्परिगणित वेदादिशास्त्रव्यतिरिक्त निबन्धनं तद्धर्मप्रमाणत्वेन नापेक्षितव्यमिति । यस्त्वेतदपि वा कारणाग्रहणे प्रयुक्तानि प्रतीयेरन्निति सूत्रम् ।

"He next explains that the doubt (*Purvapaksha*) of this Adhikarana is, whether usages in order to be valid should be usages observed by the well-informed (*Shishtachara*). In the course of this discussion Bhatta enumerates a series of acts recorded in the Puranas and the Mahabharata, of heroes and persons of a sacred character, which are manifestly improper and unfit to be followed. [See Tantravartika p. 128]. They are intelligible only by referring to special and exceptional circumstances"

Reviewing these matters he observes:—

"Who are well-informed?—Those whose actions are sound."

"Then whose actions are sound? Those who are well-informed."

"This leaves us where we were." [Tantravartika p. 128.]

के शिष्टा ये सदाचाराः सदाचाराश्च तत्कृताः ।
इतीतरेतराधीननिर्णयत्वादनिर्णयः ॥

He then examines whether the theory of conscious satisfaction (*atma tusti*) can be taken as a test of the soundness of practice. He says that although Manu mentions conscious satisfaction as a test, others deny it.

सदाचारप्रमाणत्वं मन्वादिभिरपि स्मृतम् ।
आत्मतुष्टिः स्मृताऽन्या तैर्द्धर्मे सा चानवस्थिता ॥

He himself shows that conscious satisfaction is not a reliable test.

कस्यचिज्जायते तुष्टिरशुभेऽपि कर्म्मणि ।

He solves the difficulty as follows:—

The word '*Karanagrahana*' indicates that a usage should be free from the imputation of being of other than a Vedic origin in which the desire for heavenly bliss is at the bottom. Therefore, the word

'*Karanagrahana*' must not only mean the absence of non-Vedic and improper motives, but that it also means that the acts forming the use must be such that a true believer in the Vedas would perform as a matter of duty. [Tantravartika p. 133]

तथाचारात्मतुष्टयादि धर्म्यं धर्ममयात्मनाम् ।
वेदोक्तमिति निश्चित्य ग्राह्यं धर्मबुभुत्सुभिरिति ॥

The question which has mainly engaged the attention of the commentators with reference to this Adhikarana is not whether a usage directly contradictory to the Vedas or the established Smritis can pass for good law; for when this is the case the usage must be disregarded. The question which has been discussed in this Adhikarana is, whether constructively a usage is to be held as not contradictory to the Vedas, simply because not condemned anywhere; or in order to presume non-contradiction the usage must be positively recommended somewhere. Kumarila Bhatta inclines to the view that there should be an indication of a recommendation in some shape or other. But if the three Sutras be construed together as is done by Savara Swami—then this is not necessary; a mere absence of *Kopa* (condemnation) on the part of informed and good men is enough. Bhatta accepts this view as an alternative. He says: "If the three Sutras be taken to form this Adhikarana, then with an eye to the *Shishtachara* (practices of the wise) of the Aryavarta, doubts as to validity or invalidity thereof having arisen, the author suggests that the absence of condemnation by the wise should be the test. Then the matter stands thus."

Usage is valid if recommended somewhere.

यद्वा सूत्रत्रयेनापि एतदेवाधिकरणं व्याख्यातव्यम् । 'इहार्य्यावर्त्तनिवासि-शिष्टाचारानेवोदाहृत्य पूर्ववत् प्रामाण्याप्रामाण्य संदेहे शिष्टाकोपेऽ विरुद्धमिति सिद्धान्तस्तावदुपक्रम्यते ।

"The *Shishta* (wise teaching) of Sruti and Smriti is that which is not contradicted by these latter,

"Such teaching has an authoritative character,

"If such wise teaching go against, then the validity is negatived,

"If it (Shishta) be indifferent (wanting in condemnation), then too usage is not invalidated thereby." (Tantravartika p. 145.)

शिष्टं यावत् श्रुतिस्मृत्योस्तेन यन्न विरुध्यते ।
तच्छिष्टाचरणं धर्मे प्रमाणत्वेन गम्यते ।
यदि शिष्टस्य कोपः स्याद्विरुध्येत प्रमाणता ।
तदकोपात्तु नाचारप्रमाणत्वं विरुध्यते ॥

Usage valid in the absence of non-condemnation by the wise.

Thus Bhatta admits that it is not essential for the validity of a usage that the Sruti and Smriti must have approved it positively. It is sufficient if they do not condemn it.

Colebrooke says about this Adhikarana:—

"Usage generally prevalent among good men and by them practised, as understanding it to be enjoined and therefore incumbent on them, is mediately, but not directly, evidence of duty; but it is not valid, if it be contrary to an express text. From the modern prevalence of any usage, there arises a presumption of a correspondent injunction by a holy personage who remembered a revelation to the same effect. Thus usage presumes a *recollection*, which again presupposes revelation. Authors, however, have admitted particulars sanctioning good customs in general terms: but any usage which is inconsistent with a recorded recollection is not to be practised, so long as no express text of scripture is found to support it." (x)

The question now arises as to what is condemnation by the Sruti and Smriti? A usage is contradicted by the Sruti only when it is contradicted by any obligatory text. Arthavadas and the like such as Pratipattikarma in the Sruti or the Smriti, opposed to a usage, cannot be said to contradict it.

Arthavada or Pratipattikarma (incidental acts) or the like which are not Vidhis or obligatory texts in the Srutis or the Smritis do not contradict a usage if opposed to it. Usages springing up in supersession of such matters cannot be regarded as in contravention of the Sruti and are perfectly valid. Brihatnaradiya Purana has mentioned a number of such matters which, though permitted by the sacred books, have been superseded by the practice of the Kali Yuga. This Adhikarana also supplies one of the means of determining between the authority of one Smriti text and another which may be in conflict with each other. In such a case, if the rule contained in one of the texts is found to be in actual operation as a matter of usage and the other to be out of use, the former will prevail.

Doctrines of factum valet and Vox populi.

The doctrine of *factum valet* as laid down by Dayabhaga, and the doctrine of *vox populi* as given out by Yajnavalkya अस्वर्ग्यं लोकविद्विष्टं धर्म्ममप्याचरेन्नतु and emphasised by the Mitakshara, deserve examination. It is worth observing that Jaimini's maxims regarding the force of usage (called facts) very largely apply to matters of quasi-law, which are said to be Manushya Dharma (social duties) and Pratipattikarma (incidental duties). In respect of such matters, usages springing up in supersession

(x) Colebrook's Miscellaneous Essays p. 338.

of old rules can be easily given effect to. These rules are of the nature of moral rules or rules of prudence. They must yield to force of usage recognised by the positive law on the one hand and to the general public opinion on the other. The Padarthapravalya Nyaya and the Holaka Nyaya have been mostly used by digest writers in this connection.

SECTION 6. PREFERENCE OF MATTERS SANCTIONED BY SASTRAS

Matters sanctioned by the Sastras should have preference (x):

"The Adhikarana शास्त्रप्रसिद्धपदार्थप्रमाणाधिकरणम् (Jaimini I. (iii. 5) is very narrowly put by the commentators as bearing on the limited question of verbal usages. But we shall find that the two Sutras of this Adhikarana are in continuation of the topic of the last Adhikarana, which deals with the subject of usages in general. As the preceding Adhikarana in general covers questions of the customary sense of words as well as customs and usages regarding conduct, so this Adhikarana relates to conflicts of usages in general including the question of conflict of verbal usages as well as conflict of usages regarding civil life. Kumarila Bhatta, no doubt, discusses the questions of conflicting verbal usages under this. Adhikarana. [Tantravartika p. 145.]

एकशब्दमनेकार्थं शिष्टैराचर्य्यते यदा ।
विगानेन तदा तत्र कोऽर्थः स्यात्पारमार्थिकः ॥

But he maintains the wide character of the rule as including usages in general. He supports the rule by the following arguments: "Smriti and usage conflicting, doubt arises as to whether they are co-ordinate or unequal. To regard them as co-ordinate would create confusion, although they are traceable to a common source (the Sruti)" [Tantravartika p. 150.]

स्मृत्याचारविरोधे वा साम्यवैषम्यसंशये ।
समाविप्रतिपत्तिः स्यान्मूलसाम्याद्द्वयोरपि ॥

"So I have enunciated the rule as follows: 'Between two conflicting usages (verbal or otherwise) that which conforms to the Sastra is to prevail.' " (x)

The Sutra introducing the Adhikarana as by an opponent runs thus:—

'If in them (facts established by usage) no disagreement be observed (with the Vedas), this would give rise to the confusion of

(x) K. L. Sarkar p. 249.

(x) K. L. Sarkar, p. 253.

co-ordinates.' [Jaimini I. iii. 8]

तेष्वदर्शनाद्विरोधस्य साम्य विप्रतिपत्तिः स्यात् ।

The meaning of this is that, if you accept the principle of every fact established by usage to be valid on the supposition of being consonant to the Vedas, then all such facts will be in a co-ordinate position with equal weight, and in that case yon will find it difficult to discriminate between them, if there be conflict among them. The answer is given as follows:

"(There will be no difficulty in preferring one to another by considering) which of them is found in the Sastra or is borne out by its principles [Jaimini I. iii. 9] **शास्त्रस्था वा तन्निमित्त्वात् ।** The meaning is, that in case of conflict between two usages, that one which is found in the Sastra or is conformable to it should prevail. You will observe, however, that a usage wholly outside the limits of a Sastra would be perfectly valid by the preceding Adhikarana, if there be no other usage in rivalry to it. The consideration of Sastra comes in where there is more than one usage on the same matter and in the same locality. In the same locality and with regard to the same community, two conflicting usages should not be tolerated. One of them must be eliminated by the aid of the Sastra. But, on the same matter there may be two different usages in two different localities or with regard to two different communities. Jaimini would not regard these differences as conflicts. That in such a case there is no conflict but merely difference of application, is shown by Jaimini in Chapter IV of the second Book, beginning with Sutra 8. In these Sutras, he makes out that the different practices of the different *Shakhas* are merely different applications of the same Vidhi. Kumarila concludes his discussions on this topic by the observation that, in order to determine whether a usage is in accordance with the Sruti, the secondary means of proof should not be disregarded, such as figurative sense, splitting of sense, *etc.* He also says that in cases of doubt the benefit of the doubt should be given in favour of the usage which savours of a Vedic character." [Tantravartika p. 156.]

किं वाक्यविच्छेपजननात् सैव दुर्बला ।
एवं नानोपपत्तित्वात् सन्देहे तावदुच्यते ॥
निरुक्तव्याक्रियाद्वारा प्रतिपत्तिर्बलीयसी ।
शास्त्रस्था वेत्यनेनासौ कल्प्यापि हि बलीयसी॥

"If both the *Vedic* conclusion and *Laukika* (popular) conclusion be clear and self-evident, the former prevails without saying. Therefore, that conclusion which is arrived at by Sastric materials alone is

superior and cannot be placed on the same footing with usages of a *restricted, far-fetched and mixed character."* [*Ibid p. 155*]

लौकिकी प्रतिपत्तिर्हि, स्वार्थे निः संशया स्थिता ।
वैदिक्यपि तथा स्वार्थे, बाधतेऽतो विपर्ययात् ॥
तस्माच्छास्त्रस्थितैवैका, प्रतिपत्तिर्बलीयसी ।
न समामुक्तकाचारैर्विप्रकृष्टैः ससङ्करैः ॥

SECTION 7. REDUCTION OF SMRITI TO THE FORM OF A SIMPLE VEDIC VIDHI

A usage or Smriti must be reduced to the short, simple and general form of a Vedic Vidhi :

The validity of usages is generally established by the *Padartha-prabalya* Adhikarana, if not influenced by any perverse motive or improper cause. The *Sastra-prasidha padartha* Adhikarana lays down that in case of conflict between usages, that which conforms to the Sastra is to prevail. Usages, in some cases, are often confined, to a certain class of people or obtain only in particular parts of the country, or, in other words, they may be tribal or local. In case they *are not in conflict with Sruti, a presumption is to be made in favour of* their validity. The difficulty arises as to how this presumption is to be made. If they relate to particular sections of the people or to particular regions only, should the rules to be presumed be in a particularised and limited shape? This sixth principle solves this difficulty and lays down that the Vidhi to be presumed should be a simple and general one. Again, a difficult position arises that if a general Vidhi applicable to every place and to every people is to be presumed even when the usages are tribal or local, the effect will be to abolish tribal and local customs or usages. This difficulty also has been obviated by the Mimansakas, who have kept in view the distinction between a general Vidhi embodying a general principle called Utpatti Vidhi, and Vidhis which provide the mode of application of such a general Vidhi to particular cases which are known as Viniyoga or Prayoga Vidhis that are by their very nature local or tribal. Thus, a rule of law regarding any usage or custom is always enunciated in general terms but is left to be extended to any place or to any people.

Holaka maxim.

The Samanya Sruti-kalpana or Holaka Nyaya may now be considered in this connection. Holaka means 'the spring festival' named *Holi*. The Sutras composing this maxim may be treated first and then their effect may be considered. The Adhikarana begins with the suggestion of the objector, '(if a

presumption is necessary) a presumption co-extensive with the usage would do to make it authoritative [Jaimini I. iii. 15]. The objector means to say that if there be a usage for the Holi for the eastern part of India, it may be simply presumed that the Veda enjoins that the Holi festival should be performed in the east only.

The answer is: "No, a duty should be a duty of all men following (the well-known) characteristics of an injunction (to which it is to correspond)." [Jaimini I. iii. 16]

अपि वा सर्वधर्मः स्यात् तन्न्यायत्वात् विधानस्य ।

"The application of the injunction must be guided by the facts observed" [I. iii. 17]

दर्शनात् विनियोगः स्यात् ।

"It may be named after a particular place with which it may be associated." [I. iii. 19]

आख्या हि देश संयोगात् ।

"If you say that it cannot apply to another place." [I. iii. 20]

न स्यात् देशान्तरेषु इति चेत् ।

"Why not, a name is a name from association, just as one would say this is of Mathura." [I. iii. 21]

स्यात् योगाख्या हि माथुरवत् ।

"Again there is no modifying indication of the eternal Vidhi." [I. iii. 18]

लिङ्गभावाच्च नित्यस्य ।

"The act of duty has a direction as in the case of a sloping place." [I. iii. 22]

कर्म्मधर्म्मो वा प्रवणवत् ।

"An act of duty remains the same by reason of duty being a virtue of the person." [I. iii. 28]

तुल्यं तु कर्तृधर्मेण ।

The inevitable conclusion of these Sutras is that where there is a local usage the presumption is not of the existence of a local Vidhi. The Vedas knew no local Vidhis. Owing to the universality of the Vedas, a general vidhi can only be presumed as not restricted to any place but capable of being applied locally. Even when the application is local, duty being a personal obligation, it follows the person wherever he goes.

The Vidhi is general though custom is local.

A custom is never strictly local. It is in theory universal, but in practice and application it may belong to a particular family or to a particular place. As regards its restrictions to particular classes, they are of a changeable character. Colebrooke has given the views of Kumarila Bhatta in these words: "Nor are rituals and law-institutes confined to particular classes, though some are followed by particular persons preferably to others as Vasishtha by the Bahvrich Shakha of the Rik Veda; Gautama, by the Gobhiliya of the same Veda; Shankha and Likhita by Vajaseneyi; and Apastamba and Baudhayana by the Taittiriya of the Yajur Veda. There is no presumption of a restrictive revelation but of one of general import. The institutes of law and rituals of ceremonies, were composed by authors appertaining to particular shakhas, and by them taught to their fellows belonging to the same shakha and have continued current among the descendants of those to whom they were so taught." (*x*) [Tantravartika p. 179.]

पुराणमानवेतिहासव्यतिरिक्तगौतमवशिष्ठशङ्खलिखितहारीतापस्तम्बवौधाय-
नादिप्रणीत धर्मशास्त्राणां गृह्यग्रन्थानां च प्रातिशाख्य लक्षणवत्प्रतिचरणं
पाठव्यवस्थोपलभ्यते। तद्यथा गौतमीयगोभिलीये छन्दोगैरेव च परिगृहीते।
वाशिष्ठं वह्वृचैरेव शङ्खलिखितोक्तं च वाजसनेयिभिः। आपस्तम्बीय बौधायनीये
तैत्तिरीयैरेव प्रतिपन्ने इत्येवं तत्र तत्र गृह्यव्यवस्थाभ्युपगमादि दर्शयित्वा
विचारयितव्यमिति॥

Bhatta supports the conclusion of the Adhikarana by the Sarbadhikara Nyaya (the principle that every one is competent to perform a particular religious duty). [Ibid p. 185.]

तस्मात् सर्वाधिकारन्यायत्वाद्विधानस्य व्यवस्थितदेशाचारगृह्य धर्मसूत्र
निवद्धधर्माणामपि सर्वधर्मत्वम्।

But according to Bhatta's own exposition of Padarthaprabalya Adhikarana (usage principle) usages validated by that Adhikarana are not religious duties but merely wordly duties He says:

"In usages called *Achara* (practice) reasons other than spiritual being seen, there is no Shastric evidence thereof; therefore.—there being the connection of wealth and pleasure there is no religious character in them." [*Ibid.* 145]

दृश्यमानान्यहेतुत्वात्नात्रशास्त्र प्रमाणता।
तस्मादर्थं सुखाङ्गत्वान्नाचारेष्वस्ति धर्मता॥

(*x*) Colebrooke's Miscellaneous Essays p. 337.

The Holaka Nyaya relates to religious ceremonies.

"Therefore a local or tribal custom of a secular nature falls outside an Utpatti Vidhi, which must be universally applicable. The Adhikarana in question which lays down that a religious ceremony, which is customary in the east must be taken to be universal, relates to religious ceremonies. The Sutra which follows—*Nityasyya alingatvat* नित्यस्य अलिंगतवत—the eternal not having particular signs—shows that the Adhikarana does not apply to local or tribal customs and usages of a secular nature. In fact if the Adhikarana were intended to apply to local or tribal customs, the effect would be the abolition of all such customs by generalizing them. This would place the Mimansa Sastra in opposition to the Smritis, such as those of Manu, Yajnavalkya and others. But this is far from the intention of the Mimansakas. Kumarila Bhatta expressly refers to Manu and other Smritis to strengthen his position regarding the Padarthaprabalya maxim or the maxim recognizing the validity of local customs Bhatta says: 'By the Smritikaras, among other things, it is admitted that whatever usage obtains among the good men of a place (it) is called *Sadachara* (sound usage).'"

साधूनां यस्मिन् देशे य आचारः स सदाचार उच्यते ।

Mimansakas thus recognise local or tribal customs in case of worldly matters but not in case of religious matters. According to the Holaka maxim, a local or tribal usage is not recognised by the Vedas, but only the general element in it is recognised. Jaimini's Sutras without invalidating local or tribal customs, do not encourage them. The reason is obvious as he wanted a uniformity in the doctrines prevalent in the Aryan community, specially in matters of religious practices. But as regards matters not purely religious, by the usage maxim, local or tribal customs which are not condemned by the wise are good, while those so condemned are invalid. Jaimini has denounced in toto the condemned practices, and has recognised or approved usages only. Manu enumerates all sorts of usages, aproved or condemned. For example, as regards eight forms of marriages—two, Paishacha and Ashura, have been absolutely disapproved, three of them he approves, and others he practically treats as indifferent. Due to condemnation or indifference and even to other circumstances, the Brahma form only now prevails and the others have disappeared. In the same way as regards twelve kinds of sons, Manu disapproved of the last six kinds of them that were obsolete, and out of the remaining six, four more have gradually fallen into disuse. Thus even without the aid of Holaka maxim, undesirable customs gradually disappeared.

SECTION 8. FOREIGN WORDS BEAR THE USUAL SENSE OF THAT LANGUAGE

An authorised matter expressed in foreign words must be understood in the sense that those words bear in the foreign language:

The Sutras that were then framed show that the customary Law of the Indo-Aryans was of a homogeneous character. Little or no foreign practice had made its way into it at that time. They contemplate practices handed down from the purely Vedic age and also those which were approved or not disapproved by the *Shishta* (Aryans of light and learning) and do not refer to any question involving any foreign element. Savara Swami, however, reads some of the Sutras as exclusively relating to the Mlechchha language and Mlechchha usages (*a*). This Sutra does not in any way direct the sanction of the acceptance of foreign words or foreign practices according to the import attached by foreigners. Yet Savara Swami construed it in that way and used the word Mlechchha to indicate a foreign character. This word did not refer to the heterodox Buddhists but probably to the Greeks or the Scythians, as is evident from the illustrations given by him. It is, therefore, obvious that he flourished long before Lord Buddha.

Originally no foreign influence or civilization other than that of the Aryavarta had made any inroad upon the Indo-Aryans. But some foreign influence had affected the Brahman literature at the time Savara Swami wrote his commentary, though not in any aggressive form. Subsequently foreign influences became aggressive with the result that the Indo-Aryans became strongly conservative and began to cultivate a zealously national spirit. So Kumarila Bhatta condemns foreign usage and his attacks upon the Buddhas are very biting. In his discussion on the *Sastra-prasiddha-padartha* Adhikarana, Bhatta says:

"It is foreign (Mlechchha expressions) that by false similarity to pure expressions produce error and weakness and thus lead to substantial delusions." [Tantravartika p. 149.]

यथा साध्वनुरूपत्वात् प्रमादाशक्तिजेष्वपि ।
जायते वाचकभ्रान्तिस्तथैव म्लेच्छभाषिते ॥

In this Adhikarana the position is such that it is impossible to dispense with foreign words and their foreign meaning. This is explained by Bhatta. He introduces this Adhikarana by the following Sloka:

"Those words which are not current with the people of Aryavarta:

(a) Jaimini I. iii. 10.

whether such words should or should not be understood in the sense in which they are used by the Mlechchhas?" [Tantiavartika p. 155.]

ये शब्दा न प्रसिद्धाः स्युराऱ्यावर्त्तनिवासिनाम् ।
तेषां म्लेच्छप्रसिद्धोऽर्थो ग्राह्योनेति विचिन्त्यते ॥

"If by grammatical manipulations, following the Nirukta, a sense can be made, whether such sense should be preferred or the whole thing should be understood as it is understood by the Mlechchha?" [Ibid. p. 155]

निरुक्त व्याक्रियाद्वारा प्रसिद्धिः किं वलीयसी ।
समुदायप्रसिद्धिर्वा म्लेच्छस्य वाथवा भवेत् ॥

Later on he answers the above questions as follows:

"Expressing parts of sacrificial duty, corrupt Aryan words are distinctly found. Why then cannot such parts of duty be sanctioned in Mlechchha language? This holds good in the absence of any indication to the contrary. Thus the terms *Pika* and *Nema* and others like them are settled by the learned." [Ibid 158]

यत्तु वेद तदङ्गेषु पदं दृष्टमविप्लुतम् ।
म्लेच्छभाषासु तद्रूपमर्थं कचन चोदितम् ॥
तत् तथैव प्रतीयेत प्रमाणेनाविरोधतः ।
पिकनेमादि तच्चैवं निपुणैरवधारितम् ॥

"*Choditam* means taught, or employed or incorporated into a transaction. Matters first settled by the Mlechchhas, were subsequently known by the Aryans or by those who knew both the languages." [Ibid. p. 158]

चोदितं ह्युपदिष्टं वा प्रयुक्तंवा क्रियागतम् ।
म्लेच्छैरवधृतं पश्चादार्यैर्द्वैभाषिकैः कचित् ॥

"The above clearly shows that the question is not simply a verbal one; it really relates to the adoption of Mlechchha usages as valid, when such usages are referred to in the Sastras. In fact the question of the meaning of the term Pika arises in connection with the usage of giving *dakshina* (present to the priest) of a black cuckoo. In the Sastra Prasidha Adhikarana terms are taken into consideration which have conflicting senses, one sense according to the definition of the Shastra, another according to vulgar or Mlechchha usage; for instance, the terms *Yava* (barley), *baraha* (a pig), have each a meaning according to the *Nirukta* (*Sastrik* terminology), but they also respectively mean *priyangu*, a particular weed other than *yava*, and *vayasa* a crow in some provincial

Foreign usages when valid.

dialect. By the Adhikarana referred to, which lays down that in cases of conflict a Sastrik usage is to prevail over a popular usage, the words are taken as defined in the Shastras to the exclusion of the popular meanings thereof. But in the case of the *Pika* the word is foreign, and it has only one meaning; therefore, there is no help taking it in this meaning." (K. L. Sarkar p. 262)

Two other Adhikaranas.

Besides the seven general Adhikaranas regarding the Smriti and usage laws there are two other Adhikaranas called the *Shadhupada Prayuktaja* Adhikarana and *Lokavedayo Shabda Aikyata* Adhikarana including *Akritishakti* Adhikarana, the former meaning the topic of the purity of language and the latter the topic of the identity of popular and Vedic terms. The principle of the former is that if vulgar terms occur wanting in precision of idea, pure words having a precise meaning which are equivalent to them should be substituted to make out their sense. For instance, *gavi, gouri, gopalika, etc.*, used in relation to cows in various shades of meaning must be substituted by *gau*, which has a precise meaning. A number of words conveying the same idea cause confusion besides the loss of precision. Sri Bhatta Sankara explains that a multiplicity of synonyms is barred by a single appropriate term in these words :

" Many words are barred by one."

एकशब्दत्वेन अनेकशब्दत्वं बाध्यते ।

The objector suggests : "As regards matters of common usage (*Prayoga*) the Sastras do not recognise their sacred origin (*utpatti*), therefore the words used therein follow no law." [Jaimini I. iii. 24]

प्रयोगोत्पत्त्य शास्त्रत्वाच्छब्देषु न व्यवस्था स्यात् ।

The author answers : " (There must be some principle regarding such words) as all words proceed from human efforts, and, therefore, merit and demerit attach to them," [Jai. I. iii. 25.]

शब्दे प्रयत्ननिष्पत्तेरपराधस्य भागित्वम् ।

"Many words to signify one object are not proper." [Ibid. I. iii. 26]

अन्यायश्चानेकशब्दत्वम् ।

"In such cases (*i. e.* when there are many vulgar words indifferently applied to the same thing) the real meaning is made out only by special reference to rules)." [Jai. I. iii. 27.]

तत्र तत्त्वमभियोगविशेषात् स्यात् ।

The result of this discussion is that the Sanskrit words must be given preference in construing popular sayings.

The other Adhikarana relates to the identity of sense of the same words occurring both in the sacred books and in popular language, and the principle laid down is that they are identical in sense only as regards the general denotation (*Akriti*). Bhatta Sankara reads this Adhikarana as stating that when a word has acquired various shades of meaning, it should be understood in its general sense which is one and the same, and briefly puts it thus:

" A single sense bars many senses."

अनेकार्थमेकार्थत्वेन बाध्यते ।

"In the phraseology of logic every word has a connotation and denotation. For instance, the word 'cow' connotes all varieties of cows; but it denotes a class (*Jati*) excluding all differences between one cow and another. In its connotation the word comprehends many a species of cows In its denotation it only indicates an abstract idea common to all species " (*o*)

Akriti and Vyakti.

Denotation is meant by *Akriti* and connotation by *Vyakti* by the Mimansakas The *Akriti* Adhikarana is to the effect that one and the same word occurring in the Vedas and in popular language, agrees in meaning only in so far as the *Akriti* (the general sense) is concerned, and not in respect of *Vyakti* (special sense). The relevant Sutras on this subject are:

The opponent says: "In the expressions of popular usage having the character of Vedic commands in every respect, the terms of the one must be identical in sense with the terms of the other." [Jaimini I, iii. 30.]

Further he argues: "Because (generally) operative terms (*Shabdas*) do not necessitate the use of any particular thing." [I. iii. 31]

अद्रव्यशब्दत्वात् ।

"Yet sometimes it is seen that operative terms require the use of a particular thing." [Jai. I. iii. 32] अन्यदर्शनाच्च ।

Thus the opponent says that terms of popular sayings must coincide in sense with the terms of the Vedas both as regards connotation as well as denotation. In other words, they are identical in every possible significance. The author says:

"No, they are identical only in general sense (Akriti) as simply indicating a class of acts." [Jaimini I iii. 33] आकृतिस्तु क्रियार्थत्वात् ।

The sense is that in course of time a term of the Vedas might have acquired many peculiar additional meanings, but such terms must be taken only in a general sense and not in a special or particular sense

(o) K. L. Sarkar p. 265.

CHAPTER VII

APPLICATION OF MIMANSA RULES BY DIGEST WRITERS



SECTION I. INTRODUCTION

The Mimansa principle of Jaimini, *viz.*, 'Independently of any consideration of reason, that which has been in vogue must prevail.' has established the authority of customs and of digests and commentaries, such as, those of Jimutavahana and Vijnaneshwara which have been accepted and acted upon by the different communities led by them. In re: *Collector of Madura* v. *Mathu Ramalinga Sathupathy* (*x*) their Lordship of the Privy Council unconsciously reiterated the above Mimansa principle in favour of the authority of current customs and of current legal treatises.

Ancient and modern conception of property.

In the earliest stage of the Hindu society, prior to the digest writers, the idea of individual property was unknown; property was only conceived as a matter of corporate right, *i. e.*, as a matter of family or clan dominion, though it may be a bit difficult to say whether it was a corporate right or an individual right. The facts that existed in the primitive Hindu society do not clearly justify the formulation of individual or of corporate right of property. They indicate a vague idea of a trust, of which, however, there was no *cestu que trust* properly so called. It is clearly expressed in the Smritis that the possession of property by the family was not only for the interest of the living members, but also for those who had departed from this world and those who were yet to come. Property, in the modern sense of the term, could not be said to belong either to the father or to the other members of the family, jointly or severally, according to the state of things which then existed. One family could not interfere with the property of another family, and in this sense there was family property, partly fulfilling the modern idea of property. There was no definite rule as to the manner in which the right of the family as a unit was to be exercised. Questions of internecine claims, as among the members of the family, scarcely arose in those ancient days. In case of any such dispute the matter

(*x*) 10 W. R. 21 (P. C.).

was decided by local assemblies and not by judges. The Brahmin assessors who were judges both of law and facts took care to be guided by the peculiar circumstances of each case and decided the disputes accordingly. The undefined condition in which the rights of the members of a family were left by Manu, Gautama, Yajnavalkya, *etc.*, did not cause any inconvenience or disturbance in the administration of justice.

General principles of law evolved gradually.

The system of Brahmin assessors ceased with the advent of Buddhism and the necessity of precise judicial principles as regards the law of property was felt: This need was supplied by Jaimini's Sutras. The system of logic founded by Gautama, creating a spirit of analysis and generalisation which could not rest satisfied with the vague and defective texts of the Smritis, further helped in the development of the general principles of the law of property. With the influx of Buddhistic influence, the Mitakshara, and later on the Dayabhaga, came on the scene and supplied the details of the principles of the law of property.

These circumstances and successive stages show the extraordinary acumen and logical clearness exhibited by Vijnaneshwara and Jimutavahana in evolving general principles of law of property which bear an impress of faultless juridical analysis superior even to the juridical principles of the present times.

SECTION 2. EVOLUTION OF THE LAW OF PROPERTY

Development of the principles of succession and inheritance.

It appears from a study of the Smritis, that the idea of inheritance and succession had not at all developed by that time. The rules of partition were made to serve the purpose involved in the principles of succession and inheritance. Vijnaneshwara and Jimutavahana accepted this topic to settle and develop the general principles of the law of property including the rules of inheritance and succession. Those jurists treated partition incidentally, though they assigned to it an important place. In the treatment of the principles of succession and inheritance, they took different courses. Vijnaneshwara laid down that there was no succession and inheritance as regards a son and grandson with reference to the property left by the father or the grand-father. With respect to the grand-father's immovable property, the rights of the members of the family are practically analogous to those of the members of a corporation, the rights of membership of which accrue by birth. The right of inheritance and succession has been acknowledged subject to the above condition (by birth) which is

nothing but a compromise between the principle of corporate right and the principle of the right of individual succession and inheritance. On the other hand the other jurist, Jimutavahana has not accepted this compromise but has settled the matter differently.

In the sense of the Mimansa principle, as given in Adhikarana I, Ch. ii, Book VI, that every member of a family who joins in the family worship, has the full benefit of that worship, the principle as advanced by Vijnaneshwara finds a better support than that of Jimutavahana. "In other words, according to Jaimini, of the two, the father and the son, each gets the full benefit of the properties offered at sacrifices. By analogy from this, it might well be said that each member of a joint Hindu family consisting of a father and sons, was jointly with the rest, owner of the whole of the family property. Jaimini includes the wife also as a member of the family and as a participator in the benefit of worship. Vijnaneshwara, however, does not avail himself of this argument, and the reason is plain. He *does not admit any connection* between property and religious sacrifice; Vijnaneshwara discards the idea of property being an offshoot of religious ceremony. He gives, among others, this short reason that, the performance of religious sacrifices presupposes the idea of property with which to perform the sacrifice. He maintains that the conception of property consists mainly of a sense of worldly utility. Vijnaneshwara supports his position by appealing to the authority of Jaimini who has throughout differentiated worldly interest from the spiritual interest; although throughout he has held that the worldly utility is not incompatible with the spiritual mission of man. In fact, it appears that those conservative writers who hold property to be spiritual do more than regard the institution of property to be ultimately traceable to the supreme spiritual command enjoining the attainment of heavenly bliss." (*x*).

Jimutavahana did not recognise the juridical position of the family as a natural corporate body, the membership of which accrues by birth and in which the right of survivorship obtains. In preparation of his theory he first takes up the subject of transfer of property and maintains that a mere declaration of the transferor's intention to part with his property in favour of some one having sentiency is sufficient and acceptance is only an act of availing of the right, or that immediate acceptance is not necessary. This definition of transfer is based on gifts to gods in sacrificial acts; the priest utilising the effects of gifts, if practicable, benefits the donor. Jimutavahana, thus treating the right of succession and inheritance as similar to the right by gifts, connects the right of succession and inheritance with spiritual benefit to the

(*x*) K. L. Sarkar p.

person whose property is to pass. He thus invents the principle of spiritual benefit in contrast with the principle of family corporation as advocated by Vijnaneshwara.

SECTION 3. JIMUTAVAHANA AND VIJNANESWARA

Gautama Sutra as interpreted by Jimutavahana and Vijnaneshwara.

The application of the Mimansa rules by the Digest writers would be better understood if it be considered as to how they themselves applied the Sutras to the Srutis. There is the Gautama Sutra "An owner is by inheritance, purchase, partition, seizure or finding." स्वामी रिक्थक्रयसंविभागपरिग्रहाधिगमेषु ... . । Jimutavahana takes this text to mean that in case of each of the sources of ownership, *viz.*, by inheritance, purchase, partition, seizure or finding, there must be an ethical element to complete the valid acquisition of proprietary right. The ethical element is that in each case the act must be in fulfilment of *dharma* (duty) and not in violation of it. Inheritance *etc.* is, therefore, not a mere physical event according to the Dayabhaga, but involves a moral or religious element. The additional modes for the three castes are on the lines of their caste duties (*Barna dharma*) and the principle of proprietary right is to be sought in the teachings of duty. On the other hand another of the Mitakshara school takes the words inheritance, purchase, partition, seizure or finding as mere physical events that are invested with the sense of proprietary right by the consent of the people. According to this school the idea of proprietary right accrues by popular acceptance and by that alone. Whatever the difference may be between the two schools, both rely on the Mimansa principles.

Vijnaneshwara relies on Jaimini's Lipsa Sutras, as he calls the 3rd. Adhikarana of Chapter I Book IV. Jimutavahana bases his arguments on the principle of Pratipatti Karma with which Jaimini deals in the succeeding chapters of the same book.

Now let us examine Vijnaneshwara's interpretation of the Lipsa Sutras; he reads the third Sutra as follows: "The use of property in sacrifices is a matter of the man; if there could be nothing besides the effect of sacrificial precepts, thein there would be no property, for sacrifices presuppose property; this being so, rules of gift, accceptance *etc.*, have been propounded as guides to men." [Jaimini IV. i. 3]

तदुत्सर्गे कर्मणि पुरुषार्थाय शास्त्रस्यानतिशङ्क्यत्वाच्च द्रव्यं चिकीर्ष्यते तेनार्थेनाभिसम्बन्धात् क्रियायां पुरुषश्रुतिः ।

He reads the fourth Sutra as follows: "These rules of gift, acceptance, *etc.* are not to be distinguished from the Sruti;

if they be violated, the sacrifices would be fruitless." [Jaimini IV. i. 4.]

अविशेषात्तु शास्त्रस्य यथा श्रुति फलानि स्युः ।

These two Sutras are Purvapaksha (statements of the objector). The decision which is in the fifth Sutra reads as follows:

"Whether the property was acquired in the prescribed methods or not, as this question does not affect the purpose of a sacrifice, the use of the property (either way acquired) does not invalidate a sacrifice." [Jaimini IV. i. 5] अपि वा कारणाग्रहणे तदर्थमर्थस्यानभिसंबन्धात् ।

The last Sutra of the Adhikarana reads as follows:

"So it is by popular recognition." [IV. 6] तथाच लोकभूतेषु । Vijnaneshwara's comments on the Sutras are found in his book. The translation by Colebrooke is, however, not very clear. Colebrooke is further mistaken in taking the word Guru which stands for Guru Prabhakara as meaning the venerable author (x).

II. Conception of property according to both schools.

Vijnaneshwara concludes, after considering the above Sutras of Jaimini, that the conception of property is essentially a matter of popular recognition. Jimutavahana does not controvert the general proposition that a mere moral precept, as Purusha Dharma is, does not override the Vyavahara law settled more or less by popular recognition. What he denies is that the conception of property is void of ethical considerations and consists of physical acts alone. He holds that popular recognition is no doubt a factor of the conception of property, but it must be such as to be ultimately justifiable by the consciousness of Dharma as enjoined by the command '*Swargo Kamo Yajeta.*' The ethical factor is the chief ingredient in the conception of property. He supports this view by referring to the case in which the right of property accrues to the priest in the remnants of offerings, not because the priest accepts them, but because the votary offers them to the gods with pious devotion. He points out that here the worldly part of the thing is the appropriation by the priest, but that is not the cause of the proprietary right he acquires. This is merely a *Pratipatti Karma* (incidental action). The real cause of the transfer of the proprietary right is the pious mental action of the votary (*y*). As Jimutavahana believes in the ethical origin of proprietary right, he holds that an heir takes the property of his ancestor by virtue of spiritual benefit and the property descends to him as if by relinquishment by the ancestor, and it is not a case of acquisition by the heir.

On the other hand, Vijnaneshwara, relying on the theory of popular recognition holds that relationship by blood or otherwise which influences

(x) K. L. Sarkar's Mimansa p. 391-93. (y) K. L. Sarkar p. 391; See Book I. p. 7 of this work.

men, is the basis of inheritance and succession. So he defines "heritage" (*daya*) to be that wealth which becomes the property of another solely by reason of relation to the owner." It is on account of this difference between the two jurists that Jimutavahana has made the text of Manu as the basis of his principles, for Manu lays stress on the spiritual aspect of the thing. But Vijnaneshwara relies on the text of Yajnavalkya who prefers the matter-of-fact aspect of the subject. It is worth noticing that Vijnaneshwara uses the Mimansa Adhikarana as construed by Guru Prabhakara who is reputed to be an heterodox propounder of the Mimansa Sutras. The strictly orthodox constructions of the Adhikarana by Savaraswami and Kumarila Bhatta do not support Vijnaneshwara's view. The jurists explain the Adhikarana as merely showing the difference between *Kratu Dharma* and *Manushya Dharma* without any reference to the idea of popular recognition.

Doctrine of factum valet.

In connection with the Lipsa Adhikarana, Vijnaneshwara says that a precept which belongs to the domain of ecclesiastical law has not, in the domain of Vyavahara, the same force as a positive and clear rule of the Vyavahara law itself has. In the same way Jimutavahana, dealing with the texts of Vyasa prohibiting one to alienate one's own share in joint property or one's own self-acquired property, says that this prohibition is a moral precept and cannot weigh against the man's right to exercise as much right of alienation as the positive civil law gives him. Jimutavahana takes it as an axiomatic principle of the Vyavahara law that a co-sharer can dispose of his share and that one can dispose of one's self-acquired property. If this is *factum valet* the doctrine is equally shared by both, as both hold that the breach of merely an admonitary precept, is a mere irregularity which does not invalidate the action.

III. Differences between the two jurists.

The divergence of opinion between Vijnaneshwara and Jimutavahana as to the application of certain Mimansa maxims in interpreting certain texts may now be considered. The text — a person shall not withhold any common property at the time of partition, and if he do so, it will be a fault, illustrates the matter in question. This text has been taken to be a Pratishedha (an absolute prohibition), and lays down that even when a co-sharer, who believing that he may use as his own what is common property, withholds it from partition, incurs the penalty of the text according to the peculiar rules of Pratishedha. On the other hand, Jimutavahana maintains that if the man be adjudged at all guilty, he would not be guilty of embezzlement and theft.

Vijnaneshwara says that the 'black kidney bean maxim' lays

down not only that what is prohibited cannot be used as a substitute for another thing, but also that if it be used indistinguishably mixed up with the allowed material, such a mixture too cannot be validly used. Therefore, he argues that when one withholds common property for his own use, he is not exonerated because what he withholds is a mixture of what is his and what is not his. The black-bean maxim is a *rider* of the Kalanja maxim which amounts to what may be roughly called a prohibition *in rem.* It lays down the principle that green kidney bean being allowed for use in a sacrifice and black kidney bean prohibited, if you make a powder by mixing up the ground particles of the two, that powder cannot be validly used. So Vijnaneshwara is too technical in this respect.

Jimutavahana does not hold such an appropriation to be theft. Referring to various authorities he shows that theft means taking by stealth or openly what a man knows not to be his own but to be the property of another. This does not apply to the case in question and, according to him, the application of the black bean maxim to this case is puerile; for, the definition of theft is not applicable to this case of embezzlement of common property. The learned jurist maintains that although the Pratishedha principle is of a sweeping character, yet as regards questions of guilt affecting property or the like, the provisions of the law constituting the crime should be strictly construed. As Kalanja maxim relates to those general, moral or religious matters called Purusha Dharma which are more or less of a general character so Jimutavahana has rightly taken cases of theft and the like out of the purview of that maxim. Kapijjala (partridge) maxim indicates that where a text involves the infliction of injury on another it should be narrowly construed.

The above is the divergence of opinion between the Mitakshara and the Dayabhaga schools. The same question arises under our present criminal law, *viz.*, whether a co-sharer appropriating joint property is guilty of theft. It has been held that he is not, and this is in consonance with the view of Jimutavahana.

IV. Dvayo Pranayanti maxim.

The Dvayo Pranayanti maxim in connection with widow's right to succeed to her husband, who lived separately from his brothers, has been considered by Vijnaneshwara. The difficulty arises thus: Katyayana says, "Heirless property goes to the king deducting, however, a subsistence for females." But then there are the texts regarding partition: "If he make the allotments equal, his wives must be rendered partakers of like portions." And again, "Of heirs dividing after the death of the father, let the mother also take the equal share,"

Upon this Sreekara argues that the widow is to get a share where the property is small, but that she should get merely a subsistence allowance when the property is large. Vijnaneshwara holds that such a conclusion is open to the objection of *Vidhibheda* (attaching a double sense to the Vidhi), and thus it vitiates the maxim *Dvayo Pranayanti* which is the 9th Adhikarana, Ch. III. Book VII, Sutras 23-25.

Jimutavahana does not agree with Sreekara and refers to the following texts of Yajnavalkya, II, 139-40 :

"But of a re-united (co-heir), a re-united (co-heir) shall keep the share when he is deceased, or deliver it if he is born (in the shape of a son), but of a uterine brother, a uterine brother shall keep the share, or deliver it (to his son) if (he is) born (in the shape of a son): but a re-united half brother may take the property, not a half brother (not re-united) ; also a (brother) united (through uterus, *i. e.*, a full brother) though not re-united may take, not the united, (*i. e.*, re-united) half brother alone "

संसृष्टिनस्तु संसृष्टि सोदरस्य तु सोदरः ।
दद्यादपहरेच्चांशं जातस्य च मृतस्य च ॥
अन्योदर्यस्तु संसृष्टी नान्योदर्यो धनं हरेत् ।
असंसृष्टयापि चाददात् संसृष्टो नान्यमातृजः ॥

With reference to the above texts, Sreekara holds that a re-united co-heir takes the wealth of a re-united co-heir, and the proposition that a uterine brother takes the wealth of a uterine brother does not warrant the conclusion that when there is a united half-brother and a separated whole brother, both of them inherit together.

Sreekara means to say : 'If you want to make the separated uterine brother take together with the united half-brother, you have first to make out that a separated uterine brother has a right of inheritance as an uterine brother. To make out this you must read the text 'a uterine brother takes of the united brother' as an independent proposition without reference to the other text, *viz.*, 'a united co-heir takes of the united co-heir? Again you have to establish that a separated uterine brother takes jointly with a united half-brother. In order to establish this you must read the above two texts together, the one as being subject to the other. This, he says, is double reading, and as such sins against the Dvayo Pranayanti maxim.

Jimutavahana puts Sreekara's contention, which is contained in Colebrooke's translation of Dayabhaga Ch. XI, Sec. 5, para 16, very fairly and the relevant passage runs thus :

"Thus to make two Vidhis both irrespective of each other and at

the same time to make them dependent on each other is not proper, this being the fault of what is called *Vidhi Vaishamya* (inconsistency in a Vidhi). Such inconsistency is condemned by Dvayo Pranayanti Adhikarana." Jimutavahana continues as follows:

"In the next place, he (Sreekara) goes on to show that, in the instance in question, the case of the existence of a united half-brother and the case of a separated whole-brother cannot be freed from the absurdity of the double application as shown by him at the very outset. And that therefore one must give up the hope of establishing that both of them succeed together. Consequently, according to him, the question becomes whether the one or the other should succeed. And to this question he answers that the whole uterine separated brother should succeed, because the rule regarding the half brother is only a general *prima facie* rule, which is controlled by the special rule regarding the succession of the whole brother."

न चैकस्य सापेक्षं निरपेक्षञ्च विधायकत्वमुचितं विधिवैषम्य प्रसङ्गात् यथा दर्शितं द्वयोः प्रणयन्तीत्यधिकरणे तथाचात्र यत्रैव निरपेक्षविधायकत्वं तत्रैव संसृष्टिनस्तु संसृष्टीत्यस्य सोदरस्य तु सोदर इत्यस्य च प्रवृत्तिः स्यात्। तत्रासोदरे संसृष्टिनि सोदरे चासंसृष्टिनि सत्युभयोरप्रवृत्तेस्तद्धनं न कश्चिदपि-गृह्णीयादित्यापद्यते तस्मात् संसृष्टिनस्तु संसृष्टीति संसृष्टधने संसृष्टिनः सामान्यतो भागप्राप्तौ तदपवादार्थं सोदरस्य तु सोदर इति वचनं एवञ्च संसृष्टिनोप्यसोदरस्य सोदरे सति न प्राप्तिः किन्तर्हि विभागसंसृष्टस्य असंसृष्टस्य च सोदरस्यैवेत्यन्तं। तदसङ्गतं नहि द्वयोरुभयत्रैकैकशः प्रवृत्तयो युगपदेकत्र प्रवृत्ति मात्रेण विधिवैरूप्यं॥

Jimutavahana says that the reading of the two texts, each of them independently and again both of them together, is not in violation of the principle laid down in the Dvayo Pranayanti maxim as it forbids two readings of texts which are inconsistent or contradictory. It does not prohibit the reading of two texts independently and again reading them together so as to apply them to a new case. Jimutavahana begins his arguments thus:

"That is not congruent: for it is not true, that there is variableness in a precept, merely because two (rules) which are severally applicable to two (cases) become applicable in a single instance at the same time."

तदसङ्गतं नहि द्वयोभयत्रैकशः प्रवृत्तयो युगपदेकत्र प्रवृत्तिमात्रेण विधि वैरूप्यं।

These arguments are contained in paras 17-31 of section 5, Ch. XI of Colebrooke's translation of the Dayabhaga. He begins by giving

examples of what inconsistency (*Vidhi Vaishamya*) is, and what it is not. He refers to the Samyoga Prithaka and other such maxims as showing cases of double reading without inconsistency, and explains the *Apachheda* and other maxims as cases of inconsistency of texts. Jimutavahana's explanation of the Apachheda maxim may be quoted here :

"Thus, in respect of the precepts enjoining the votary to bestow his wealth as a gratuity in one instance and no gratuity in the other, which are respectively applicable independently of each other, if either the priest doing the functions of Udgatri or the one performing the office of Pratistotri, singly stumble (in passing from the one apartment to the other, at the celebration of the sacrifice called *Jyotishtoma*); but if both these priests stumble at the same time, neither injunction would be a variableness in the precept." (Colebrooke).

केवलोद्गातृ प्रतिस्तोत्रपच्छेदेन निरपेक्षप्रवृत्तयोः सर्व्वस्व दाक्षिण्यादाक्षिण्य शास्त्रयोर्युगपदुभयापच्छेदे सति नैकमपि शास्त्रं प्रवर्त्तेत विधिवैरूप्यात् ।

In this connection Jimutavahana has explained the general principles of the law of prohibition and exception (as given at p. 35) and has also discussed the classification of positive Vidhis either to be Nitya or Naimittika or Kamya. He holds this case to be of Kamya Vidhi and puts it thus to Sreekara :

"You really treat the second part of Yajnavalkya's text as a Nitya Vidhi. But if it were so, the whole text providing about optional and voluntary acts, such as separating and non-separating, becomes absolutely useless and irrelevant." So Jimutavahana concludes that effect should be given to both parts of the text by holding that, where there is an associated half-brother and an un-associated full-brother, they should divide the property equally. He settles the whole controversy by showing that the word 'alone' should be understood to qualify the words towards the end of the passage. And Colebrooke has accordingly inserted this word.

K. L. Sarkar (p. 404 sums up the discussion thus : "The bearing of the Dvayo Pranayanti maxim on the general arrangement of the Mimansa system is this : The axiom of a word once uttered not to be taken in two senses, prevents the misapplication of the Linga principle. The Dvayo Pranayanti maxim prevents the misapplication of the Vakya principle by preventing such reading of two clauses with each other as lead to inconsistency. There is also a rule to prevent the misapplication of the Prakarana principle. This rule is known as the rule disallowing *Atiprasanga, Atipiasanga* meaning the far-fetched inclusion of one idea up to another. Jimutavahana by his nice dissertation, emphasised the Dvayo Pranayanti maxim."

Jimutavahana's view as to father's power over ancestral and self-acquired property:

It would be interesting to note how far the Dvayo Pranayanti maxim has been trodden upon by the Judges: Jimutavahana has laid down that the father of a family has absolute proprietary right to his self-acquired property; but his proprietary right to ancestral property is so limited as to entitle him to a double share only at the time of partition, and to leave him no right to make any arbitrary distribution among his sons. Thus the father's right over ancestral property is restricted and he is bound to make either the shares of the sons equal, or to give to the eldest and the middle ones the excess prescribed by Manu. He can, of course, retain for himself a share double that of a son, and can also sell a part of the property for the maintenance of the family.

Misinterpretation by English Judges.

It is thus evident that the father is a co-parcener of the ancestral property to the extent of a double share, then the *factum valet* doctrine may be applied to alienations made by the father, of his share only. How can this doctrine therefore be applied to one's own exclusive property and again to what is not exclusive property? It would be a case of Vidhi Vaishamya as explained by Jimutavahana. The English Judges committed a mistake by applying the doctrine to both cases, inconsistent with each other, and violated the principle of Vidhi Vaishamya or the Dvayo Pranayanti maxim.

Jimutavahana has clearly restricted the father from selling or otherwise disposing of ancestral property, because of the sons having a legal right of maintenance by the express text of Manu and also because of the reason that a father cannot partition the ancestral property before the mother is past childbearing age. Thus the father held the ancestral property subject to the legal charge of maintenance in favour of the sons. This charge has never been taken as a matter of moral precept like that of the precepts regarding maintenance out of the self-acquired property of the father or out of the property of co-parceners.

These texts which he takes as moral precepts, and the breach of which he takes as cured by the *factum valet* principle are as follows: "Though immovables or bipeds have been acquired by a man himself, a gift or sale of them (should not be made) by him, unless convening all the sons."

"A single parcener may not, without the consent of the rest, make a sale or gift of the whole estate, nor of what is common to the family." (Vyasa).

स्थावरस्य समस्तस्य गोत्रसाधारणस्य च ।
नैकः कुर्य्यात् क्रयं दानं परस्परमतं विना ॥

"Separated kinsmen, as those who are unseparated, are equal in respect of immovables; for one has not power over the whole, to give, mortgage, or sell it.'

विभक्ता अविभक्ता वा सपिण्डाः स्थावरे समाः ।
एको ह्यनीशः सर्व्वत्र दानधमनविक्रये ॥ [Vyas]

The reason of applying the *factum valet* principles to these texts is obvious. They must be mere moral precepts, as being inconsistent with the following text declaring individual right of property :

"When there are many persons sprung from one man, who have duties apart, and transactions apart, and are separate in business and character, if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth." (Narada XIII, 42, 43)

यद्येकजाता बहवः पृथग्धर्म्माः पृथक्क्रियाः ।
पृथक्कर्म्म गुणोपेता न चेत् कार्य्येषु सम्मताः ॥
स्वभागान् यदि दद्युस्ते विक्रीणीयुरथापि वा ।
कुर्य्युर्यथेष्टं तत् सर्व्वमीशास्ते स्वधनस्य वै ॥

But how can this doctrine be applied to the following texts of Yajnavalkya and Manu which are not inconsistent with any other positive rules and which Jimutavahana throughout treats as binding :—

"The father is master of the gems, pearls and corals and of all (other movable property): but neither the father, nor the grandfather, is so of the whole immovable estate." [Yajnavalkya]

मणिमुक्ताप्रवालानां सर्व्वस्यैव पिता प्रभुः ।
स्थावरस्य तु सर्व्वस्य न पिता न पितामहः ॥

"The support of persons who should be maintained is the approved means of attaining heaven. But hell is the man's portion if they suffer. Therefore (let a master of a family) carefully maintain them." (Manu)

Thus Jimutavahana clearly admits that the restriction imposed by the texts of Yajnavalkya and Manu on the power of the father's ownership over ancestral property is legal to the extent of the charge which the sons have over it for maintenance and that the restrictions imposed by the text of Vyasa and others regarding the self-acquired property, are merely moral precepts having no legal force. This distinction has been constantly maintained. If the Mimansa rules of interpretation would have been properly applied no such mistake, *viz.*, that of removal of the above distinction, would have occurred. The

construction of the so-called *factum valet* text to the effect that Jimutavahana makes no distinction between ancestral and self-acquired property violates all the general principles laid down by Jaimini, such as, Linga, Vakya and Prakarana

It is, therefore, evident that the Mimansa rules of interpretation are applicable and can be usefully applied to the construction of the works of Digest writers, who have codified the Smritis and who are to be looked upon as our latest lawgivers. But the pronouncements made by the British Indian courts, whether right or wrong, are to be accepted as the law. Owing to the ignorance of the application of the Mimansa principles the question that the father's devise of ancestral property is subject to the charge of maintenance of sons has not been pressed and the decisions are conclusive as regards the Bengal school of Hindu Law that the father has absolute right of disposal in respect of the ancestral property as well.

Law of wills and gifts.

Another instance of the wrong construction of Jimutavahana's text in connection with the power of disposal of immovable property by the father is this: The law of wills is engrafted on to the law of gifts in the Bengal school. According to the Mimansa principles the law of gifts has been made applicable to that of wills by way of Atidesha. It has been explained that in this respect one has to see that an old rule is not made applicable wholesale to a new case if parts of the former do not fit in with the latter and such parts should be treated as Badha. Briefly, the Mimansakas hold that in applying our old rule to a new case the general rule may be subjected to exceptions.

The general principle as to gifts has been laid down by Jimutavahana thus:

"The donee's right to the things arises from the act of the giver; namely, from his relinquishment in favour of the donee who is a sentient person." [Dayabhaga, Ch. 1, para 21]

दाने हि चेतनोद्देशविशिष्ट त्यागादेव दातृव्यापारात् सम्प्रदानस्य द्रव्ये स्वामित्वम् ।

On the basis of this text their Lordships of the Privy Council held that under the Bengal school a testator cannot make a valid bequest in favour of a person who is not in existence at the time of his death.

Principle of invalidity of gifts in favour of non-existent too general.

This principle as to the invalidity of gifts in favour of non-existent persons is too general. According to the Hindu Law and Jimutavahana's own text, this general proposition should be subjected to an important exception as regards testamentary settlements in favour of lineal descendants up to the

great-grandson though not in existence, as the accepted principle of the Hindu Law is that a man should not only provide for the maintenance of the existing members of his family, but also for those who are yet to be born. There is a text of Vyasa also to this effect :

"Though immovables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They, who are born, and they who are yet un-begotten, and they who are still in the womb, require the means of support; no gift or sale should therefore be made."

स्थावरं द्विपदञ्चैव यद्यपि स्वयमर्जितं ।
असम्भूय सुतान् सर्व्वान् न दानं न च विक्रयः ॥
ये जाता येऽप्यजाताश्च ये च गर्भे व्यवस्थिताः ।
वृत्तिं च ते ऽभिकाङ्क्षन्ति न दानं न च विक्रयः॥

This text has been quoted in the Mitakshara, though partially by Jimutavahana, in connection with the widely known saying that a fact cannot be altered by a hundred texts. It is true that the text has been treated by Jimutavahana as a moral precept But if it is the duty of a man to provide maintenance and support for those members who are born and those who are yet un-begotten, it is absurd to suggest that it is illegal to provide by will for grandsons, great-grandsons and the like who may not be in existence at the time of the testator's death. Jimutavahana himself acknowledges that one who violates the precept incurs a sin, and he emphasises the duty of maintaining the family by quoting the text of Manu :

"For, the maintenance of the family is an indispensable obligation, as Manu positively declares, 'The support of persons who should be maintained is the approved means of attaining heaven. But hell is the man's portion if they suffer. Therefore, (let a master of a family) carefully maintain them.'"

कुटुम्बस्यावश्यं भरणीयत्वात् यथा मनुः ।
भरणं पोष्यवर्गस्य प्रशस्तं स्वर्गसाधनं ।
नरकं पीड़ने चास्य तस्माद्यत्नेन तं भरेत् ।

Of course there must be some limits as regards the members not yet born and it is clearly indicated by the text of Manu so often quoted by Jimutavahana :—

"To three must libations of water be made; to three must libations of food be offered."

The underlying idea of the Hindu philosophy of life is that there is the continuity of the same person. Therefore, in applying the

principle to the law of gifts which requires that the donee should be a sentient person, in the case of a will an exception must be made as regards devises in favour of descendants up to the great-grandson. The Badha principle requires such an exception to be made, but unfortunately this exception was not accepted by their Lordships of the Privy Council in *Tagore* v. *Tagore* (*x*). The only exception to the rule against perpetuity with respect to religious and charitable trusts has been admitted.

K. L. Sarkar, the learned Tagore Law Professor, has summed up these misinterpretations thus: "Vijnaneshwara's work has no less suffered at the hands of English Judges in the way of wrong interpretation than Jimutvahana's work. The basical principle of his work restricting the disposing power of the father with respect to ancestral property has been virtually done away with, and that by violating the Dvayo Pranayanti maxim which he, in common with Jimutavahana, revered. By the two clauses translated by Colebrooke in paras 28 and 29, Section 1, Chapter I, Vijnaneshwara limits the power of the father to the right to alienate properties, either in case of minority of his children or for family necessity or for pious duty. This is very short of the large power which has now been adjudged to him, *viz.*, to alienate for any cause provided it is not for immoral purposes. This large power is given by relying on the clauses 50 and 51 of Yajnavalkya regarding the duty of sons to pay their father's debts. But these clauses relate to the payment of debts of a father who is really or practically dead. These clauses have nothing to do with debts contracted by a father while he is living. To read these debt clauses once as only relating to the liability of heirs and again as affecting the liability of co-parceners is, simply a violation of the Dvayo Pranayanti maxim as explained by Vijnaneshwara." (*p*).

SECTION 4. NILAKANTHA, MEDHATITHI AND RAGHUNANDANA

Nilakantha's work, the Vyavahara Mayukha, is a general digest, prevalent in the Bombay presidency. Nanda Pandit has given a special treatise on adoption, *viz*, the Dattaka Mimansa whose view has been followed by the Dattaka Chandrika. These authors differ in relying on the Mimansa principles in enunciating the law of adoption. So their discussions on the particular subject of adoption illustrate and explain those Mimansa principles. Nilakantha's scholarship in the Mimansa Shastra is as great as that of his venerable father, Sankara Bhatta, the author of Mimansa bala-prakash.

He was a lawyer of liberal views who never betrayed a spirit of exclusiveness. According to him, the Sudras are subject to

(x) (1872) 9 Beng L. R 377, I A Sup Vol 47 (p) K L. Sarkar p 415.

the three debts equally with the three twice-born castes, a position not conceded to them by the other jurists. His liberal tendency is evident from his recognising the power of the widow to adopt a son, while according to Nanda Pandit she cannot adopt even with the assent of her kinsmen. Nilakantha favours the adoption of sister's son and the like, contrary to the view of Nanda Pandit. The Privy Council in one important question, *viz.*, the non-eligibility of the son of the sister and the like, have given effect to the views of Nanda Pandit. They have done so on the ground that those views have been acted on for a long time. Before taking up in detail the differences of opinion among them regarding adoption, it will be profitable to consider other subjects.

I. Sarvadakshina maxim.

Let us examine how far a sovereign has a proprietary right to the soil included in his dominion. It is Sarvadakshina maxim regarding which Nilakantha says:—

"In conquest also, where there is ownership of the conquered in houses, lands, money, or the like, therein only arises the ownership even of the conqueror: but where the conquered has a right to taking taxes (only), the conqueror has even the same, and no ownership. Therefore, it is stated in the sixth book of the Purva Mimansa, 'the whole earth cannot be given away by the king of the world; neither the (whole) Mandala (dependency) by the ruler of that dependency.' The ownership in each village, field, and the like of the whole earth or the dependency belongs solely to the respective *Bhaumikas* or landlords. The ruler has only to take the taxes. Hence in what is now technically called a gift of land, *etc.*, a gift of the soil is not accomplished, but only a grant of due allowance (as provided). But in purchases made from the *Bhaumikas* or owners of the soil, even ownership in houses and soil accrues. Therefore (to the giver of such land) there is also the fruit of the gift of the soil." [Mandlik's Ed. pp. 34-35]

Nishada Sthapati maxim shows that a Nishada can be a Sthapati—

II. Nishada Sthapati maxim.

a sacerdotal functionary—as referred to by Nilakantha in the following passage:

"Thus the right of a Sudra to adopt, being established like the established right of the carpenter—Nishada (to perform a sacrifice), the assertion in the Shuddhi Viveka that a Sudra is not entitled to make the acceptance of a son, which has to be accomplished through Vedic Mantras (sacred texts), and by a Homa (sacrifice to the fire) is also refuted." [Ibid pp. 55-58]

The two texts of the Maitra-Varuna maxim:

III. Maitra Varuna maxim.

"He hands over the staff to the Maitra-Varuni priest." and

"He initiates by means of the staff."

mean that the initiation must take place by a staff which has been handed over by the priest or, alternatively, that a staff must be handed over to the priest in order that he may effect the initiation by it. The question is which of the two sentences is imperative and which is a mere recital.

Jaimini holds the latter construction to be more proper and the Adhikarana means that the words 'hand over the staff' are not merely the recital of an act done but constitute an injunction.

Utility of the maxim. Nilakantha has made use of this maxim in construing Saunaka's text :

"The daughter's and the sister's sons are indeed adopted as sons by Sudras."

दौहित्रो भागिनेयश्च शूद्रैस्तु क्रियते सुतः ।

Nilkantha takes the above text as divisible into two parts : (1) The daughter's and sister's sons are adopted. (2) They are adopted indeed by the Sudras. By applying the Maitra Varuna text he holds that the first sentence indicates as to what should be done, and the latter sentence is a subsidiary recital. Therefore, the text does not lay down that the adoption of a daughter's and sister's son is limited to the Sudras. For if it be so limited the rule of Parisankhya appears applicable which means that what is expressly mentioned excludes what is not mentioned. This rule is not legitimate according to the Mimansakas.

Sankara Bhatta's application of the maxim of the Three Debts :

IV. Maxim of Three Debts. "[If it be asked] how the son is of future use, the answer is :—In the Vedic text 'There is no [translation] to the higher world [after death] in the case of a sonless man : [for] by his birth a Brahmana becomes a debtor in three [ways, *viz.*], to the gods in sacrifices, to the manes in issue, [and] to the Rishis in learning'; the term Brahmana is used as illustrative [of all the classes], as has been stated in the Adhikarana (aphorism)—*Brahmanasya Somavidya prajasrinavakyena Samyogat*, [Jaimini VI. ii. 31] ब्राह्मणस्य तु सोमविद्या प्रजामृणवाक्येन संयोगात् । which means 'To the Brahmana *soma* (or sacrifice), *Vidya* (knowledge of the Vedas) and *Praja* issue [in the shape of sons] are [necessary], because of the applicability to him of the text of [the three debts]. Thus a Sudra [too] has to discharge his debt to the manes.' (Mandlik's Ed. pp. 54-55).

V. Adoption. The authors of Dattaka Mimansa and of the Dattaka Chandrika rely equally on Mimansa principles in dealing with the law of adoption. For instance, among others

the Dattaka Mimansa refers to (1) Pranbhrit Maxim(*a*), (2) Vaiswadeva Maxim (*b*), (3) Jateshti Maxim (*c*), (4) Ishti Somaya (*d*) and some other Maxims regarding the order in which acts should be performed. The Dattaka Chandrika refers to the Ambiksha Maxim (which is referred to by Nanda Pandit as well) and the Kapijjala Maxim among others.

Pranbhrit maxim.

This maxim means that what originally had a limited signification, may have acquired an extended one. Nanda Pandit has laid down that the word substitute though at first applied to only five descriptions of sons, is, by general use, now applied to all the twelve descriptions of sons (D. M Sec. 1, para 35):

यथा क्षेत्रजपौत्रिकेयपुत्रिकाकानीनगौनर्भवसहोढ़जगूढ़जानां कचित् मातृमात्र सम्बन्धात् कचिच्चाविकलोभय सम्बन्धादविकलावयवत्वेन मुख्यप्रतिनिधित्वं दत्तकक्रीतकृत्रिमदत्तात्मापविद्धानां वाचनिकं प्रतिनिधित्वमिति प्रतिनिधिशब्दश्चोभयत्रापि भूम्ना सृष्टोरुपदधातीतिवत् ।

Vaiswadeva maxim.

This maxim lays down the principle that in the case of a compound word like Vaiswadeva the meaning of the component parts being ignored, the conventional sense of the whole is to be adopted. The term Vaiswadeva is the proper name of a particular Yajna but not of the god of the universe. This principle has been utilised by Nanda Pandit to show that although the word *Sapinda* has an etymological sense consisting of the meaning of *Sa* and *Pinda*, the conventional meaning of the compound word, as indicated by a certain text of Manu, should be accepted (D. M. Sec. VI. para 27).

The Jateshti Maxim or the maxim for the substitution of the Putika plant for the Soma plant **पूतिकस्य सोमप्रतिनिधित्वाधिकरणम्** । (Jaimini VI. iii. 13).

It holds that a thing is enjoined for a certain purpose but in its absence another thing which serves that purpose may be substituted In the case of the adopted son Medhatithi raises the question that he cannot be the substitute of a begotten son, because the paternal debt is satisfied by begetting a son, and begetting is wanting in the case of adoption. By the aid of this maxim Nanda Pandit refutes Medhatithi's objection and explains that the case of the thing for which a substitute is to be made is not to be looked at from the standard of the thing substituted but from the view point of the purpose which the substitute serves. He further supports his view by arguing that a son

(*a*) Jaimini I. [illegible]. See p. 100 of this work.
(*b*) *Ibid*. I. iv. [illegible] See p. 100 of this work.
(*c*) *Ibid* I iv 18.
(*d*) *Ibid*. V, iv 3.

secures salvation by offering Pindas, and an adopted son would serve the same purpose and that the act of begetting is incidental in the way of securing the instrument for the purpose of salvation [D. M. Sec. 1. para 41.]

तस्मादानृण्यभाविषयायां भावनायां पुत्रस्य करणतया तदपचारे दत्तकादीनां प्रतिनिधित्वमविरुद्धं सोमापचारेपूतिकानामपि ।

Ishti Somaya maxim.

Nanda Pandit invokes the Ishti Somaya maxim to clear the difficulties arising from texts as to the necessity of performing the Jateshti ceremony (the sacrifice for the well-being of the born) on the part of an adoptive father, the sacrifice for the male issue and the burnt sacrifice in case of the adoption of a previously betrothed woman These ceremonies have been prescribed to be performed by the natural father shortly after birth In view of these difficulties Nanda Pandit held that an adoption up to the fifth year is valid and it is also valid if the *tonsure* ceremony has not taken place. The adoptive father is also required to perform these ceremonies. He gets over these difficulties by making use of the Ishti Somaya maxim which in effect lays down that when a difficulty arises with reference to the order in which an action is to be performed, reason and necessity must be taken into consideration. In the same way Nanda Pandit also makes use of the 17th and 18th Adhikaranas which allow the shifting of time in emphatic terms by pointing out that because the birth ceremony is to be performed, just on birth, the literal meaning cannot be carried out, for the child must have time to breathe and suck his mother's breast otherwise the consequence may be fatal.

Nanda Pandit refers to the second Adhikarana of Book X. Chapter 8 lays down that in the Pashu Yajna the prohibition of the two offerings of ghee called Ajjyabhaga is merely an Arthavada. This maxim has been referred to by him in laying down the proposition that the marriage of a person with a Sapinda girl, has no application to the case of the marriage of the adopted son with a girl who is a Sapinda of his adoptive father, as he says that the prohibitory rule is merely a recital of the prohibition of conjugal connection between persons related both by birth as well as by the practice of the offering of oblations. This rule cannot be applied in the case of an adopted son [D. M. Sec. VI. para 31]

Amiksha maxim.

The object of this maxim is to separate the principal effect from the incidental. This maxim has been made use of by Dattaka Chandrika in removing the objection of those who do not accept two co-widows as the adoptive mothers of the child if one of them did not join in the act of

adoption. The author argues that the adoption is really to the husband and that the relationship of the son with the wife of the adopter is merely incidental. So it is quite immaterial which of the two widows adopts, the adopted son bears the same relation to both the widows.

Kapijjala maxim.

This maxim has been referred to by Dattaka Chandrika in connection with the word Brahmanas in the plural number, which occurs in a portion of Saunaka's quoted text.

Texts of Saunaka and Sakala as to adoptibility of certain sons.

The authors of Dattaka Mimansa and Dattaka Chandrika take the text of Sakala to be clear and conclusive as to the adoptibility of daughter's or sister's or maternal aunt's son. But Nilakantha's treatment of Saunaka's text shows the doubtful nature of that text. Sakala's text also, which is in contravention to the text of Manu, laying down that the daughter's son may be accepted in some cases as a son, is extremely doubtful. As regards the adoption of a boy who is the only son of his parents, both commentators entertain no doubt as to the binding character of the texts of Saunaka and Vasistha on the point, although their Lordships of the Privy Council have held the texts to be merely directory.

(1) Application of Linga principle.

Medhatithi shows that in the passage *Varhi Deva-sadanam dami*—an affirmative sentence is treated as mandatory by the principle of Linga (the suggestive power of words).

वर्हिर्देवसदनं दामीति लिङ्गादनेनवर्हिर्लुनातीति श्रुतेरनुमानम् ।

He also emphasises the principle that where a clause clearly shows an express command, the principle of Linga is not to be resorted to.

विध्यर्थता चावगम्यमाना लिङ्गादीनां त्यक्तास्यात् ।

(2) Kamya and Nitya Vidhi.

He further holds that where acts are enjoined without the mention of any beneficial result, the acquisition of heavenly bliss is to be presumed as the intended result of the Viswajit Nyaya सौत्यर्यादिषु इत्यादि ।

He has even explained that where the attainment of a benefit is the object of a prescribed act, if a man does not perform the act, he loses the benefit, as in the case of a Kamya Vidhi. But in case of a Vidhi being absolute (*Nitya*), the question of benefit does not arise; in the case of failure the person suffers the evil consequences of disobeying it, and that he is to do the act to prevent those evil consequences. Apurva sanction has also been clearly explained by him (by comments on Sloka 7, Ch. I).

Medhatithi applies Grahaikatwa maxim to the passage "A Brahmana

(3) Grahaikatwa maxim.

should not drink spirituous liquor" and interprets it to include the whole class of Brahmanas, male and female. In this connection he also discusses why the passage 'sacrifice animal in a Yaga' should not be so construed as to justify the sacrifice of many animals but should be interpreted literally to mean the sacrifice of a single animal. It relates to another maxim [Sloka 90, Ch V] Many such instances can be found in his commentary.

Application of Vakya principle by Raghunandana.

Raghunandana in connection with Manu's text: अवगूर्य्यचरेत् कृच्छ्रमतिकृच्छ्रं निपातने "one who assaults a Brahmana must perform the *krichhra* penance," explains that it should not be taken as a Prakarana of the Darsa Paurnamasi Yagya in relation to which it occurs, but as a general Vidhi. Another question arises as regards this passage whether when a man assaults five Brahmanas, he is to perform the *Krichhra* penance five times. Raghunandana holds that by the principle of Tantrata one performance of the penance is sufficient. One more question arises as to what would be the punishment in case of its defiance. Raghunandana says that punishment is mentioned in the next sentence which is an Arthavada supplying the defect of the Vidhi text.

Illustration of Apurva sanction.

Apurva sanction has been illustrated by Raghunandana with regard to the Janmastami ceremony where a reward has been mentioned for the fasting but none has been expressly mentioned for the act of worship itself to be performed on the occasion.

Animal sacrifice in Durga Puja vindicated.

With reference to the Smriti text requiring animal sacrifices at the Durga Puja, owing to the Vedic Vidhi prohibiting the causing of injury to living beings, the Smriti text requiring the sacrifices of animals cannot hold good. Raghunandana meets this objection thus: a Pratishedha (negative Vidhi proper) has for its object the prevention of that which a man would do by his own inclination or passion and, as such, it cannot include the prevention of what a man is to do as a duty. So there is no conflict [Tithitattwa in Ashtabinsatitattwa p. 40. B. M. Dey's Edition]. Raghunandana has also treated the subject of Badha and Atidesha at length in his Tithitattwa.

"Raghunandana illustrates the difference between a Pratishedha and a Paryudasa by the prohibition that one should not take food on the *day* of the eleventh day of the moon. He holds that in the event of the Ekadasi expiring in course of the day, the above mentioned Vidhi requiring fasting for the whole day, would override the injunction that one should perform the Vishnu Puja after the expiry of Ekadasi and should eat the relics of the offering."

With reference to the following text Raghunandana discusses at length the nature of Paryudasa in Malamasatattwa, section 12 :

"Sraddha is not to be performed in the night, *etc.*"

रात्रौ श्राद्धं न कुर्व्वीत राक्षसी कीर्तिता हि सा ।
सन्ध्योरुभयोश्चैव सूर्य्ये चैवाचिरोदिते ॥

This is to be read with the text laying down that the Parvana Sraddha is to be performed during the new moon (which may extend into the night). He sums up the discussion by the observation :

"Paryudasa occurs where there is an ascendancy of the positive clause and there is an inferiority of the negative clause, and where the negative clause comes after. On the other hand, where the inferiority is in the positive clause and the superiority in the negative clause, and where the negative particle refers to the essence (predicate) of the positive clause, there the negative clause is a *Prasahya Pratishedha.*" [Malamasatattwa p. 80]

प्राधान्यन्तु विधेर्यत्र प्रतिषेधेऽप्रधानता ।
पर्य्युदासः स विज्ञेयो, यत्रोत्तरपदेन नञ् ॥
अप्राधान्यं विधेर्यत्र प्रतिषेधे प्रधानता ।
प्रसज्यप्रतिषेधोऽसौ क्रियया सह यत्र नञ् ॥

He further explains that generally the non-compliance with the exception does not subject one to any punishment, such non-compliance only rendering the act ineffectual, but in some exceptional cases, the non-compliance may be visited with penance (punishment). According to Jaimini the prohibition in such a case is called an *Anarambha Pratishedha.* But Raghunandan holds that the prohibition in such cases should be taken in the double sense of a Pratishedha and a Prayudasa. This view is contrary to the principle laid down in Dvayo Pranayanti maxim.

Laghava axiom.

Atidesha principle.

With reference to the performance of Sraddha, Raghunandana illustrates the Laghava axiom, *i.e.*, the axiom requiring simplicity. He also discusses the Atidesha principle with reference to a text laying down that the eldest son is not to offer the *Pinda* on a certain day of the moon (*x*).

SECTION 5. UTILITY OF THE PRESUMPTIONS OF SUBSTANTIVE LAW IN MATTERS OF INTERPRETATION

Principles underlying Smriti law.

For the interpretation of Hindu Law a knowledge of the principles which underlie the whole of the Smriti law is very essential. When the language of a text is not clear, the established presumptions of the

(*x*) K. L. Sarkar's Mimansa Rules of Interpretation, 431-34.

substantive law alone can help an interpreter. Therefore, it is but essential that one should know the presumptions of the substantive law of the Hindus. Though Jaimini has largely dealt with the principles of the laws of sacrificial acts and his treatise abounds in the examples of interpretation with reference to the presumptions arising from the sacrificial laws, *e. g.*, Darsa Paurnamasi, the Agnihotra and the like, he is not silent on the principles of civil law as well.

Three great presumptions :

Jaimini has dealt with the fundamental principles of substantive Smriti law. The three great leading presumptions which serve as beacon lights to interpretation are given below :

I. Every Aryan is to make religious sacrifices.

II. Every Aryan is to seek knowledge.

III. Every Aryan is to have a family.

These are termed as the *three debts* of an Aryan. Jaimini names these three propositions as the maxim of the three debts. The Sutra on the subject runs thus :—

"Of the Brahmin sacrifice, learning and family life (are absolute duties) being joined with the word debt." (Jaimini VI. ii. 31).

ब्राह्मणस्य तु सोमविद्याप्रजासृणवाक्येन संयोगात् ।

Savara Swami explaining this maxim in detail, points out that these are the Vedic texts :

"One must pray and sacrifice by sacrificial acts." **सोमेन यजेत ।** [Taittriya Samhita 2, 5, 6, I]

"The Brahmana must assume the sacred thread in the eighth year." [*Ibid*]

"One must beget children." [*Ibid*] **प्रजामुत्पादयेत ।**

The author says that they are absolute because these three classes of duties are mentioned as debts in the following Vedic text :

"A Brahmana becomes free of his debt to the gods by sacrifice, that due to the Rishis by austere learning of the Vedas, that due to the forefathers by begetting son." [Taittriya Samhita 6, 3, 10, 5].

जायमानो हि वै ब्राह्मणस्त्रिभिः ऋणैः ऋणवान् जायते यज्ञेन देवेभ्यो ब्रह्मचर्येण ऋषिभ्यः प्रजया पितृभ्यः एष वा अनृणो ।

It is argued that although only the word Brahmana is used, the rule applies to all Aryans. Savara Swami further refers to the following passage of the Vedas as illustrating the maxim.

"In every spring season sacrifice and pray by the brilliant light, during the whole life practise invocation by fire, as also pray and sacrifice by the new and full moon celebration. Similarly acquire learning, similarly be father of sons."

वसन्ते वसन्ते ज्योतिषा यजेत, यावज्जीवम् अग्निहोत्रं जुहोति, यावज्जीवम् दर्शपूर्णमासाभ्यां यजेत तथा विद्यामधीयीत । तथा प्रजा उत्पादयितव्या इति ।

Therefore, it is but essential that in construing the texts relating to the duties and rights of the Hindus, it should be presumed that all texts more or less intend to promote these three classes of duties, *viz.*, the presumptions arising in favour (1) of securing spiritual welfare, (2) of encouraging learning and skill and (3) of the family institution.

Three debts maxim keynote of Hindu constitution.

These three presumptions have been relied upon by digest writers. Jimutavahana, discussing the principles of succession, distinguishes between the Sruti texts many of which are at variance with one another, and relies mainly on the presumption in favour of spiritual welfare. This theory of spiritual benefit is similar to the principle of *Swargo Kamo Yajeta.* He clearly favours and encourages *Vidya* (learning) with reference to the texts about self-acquisitions.

The presumption in favour of the family institution has been solely relied upon by Vijnaneshwara in dealing with the right by succession. Jaimini's maxim of the three debts is the keynote and constitutes the nucleus of the elaborate principles developed by the learned commentators. The Hindu nation has faithfully and systematically followed these Vedic commands regarding sacrifice, learning and family institutions.

As regards the debt to gods, the life of every individual from birth to death is, at every stage impressed with a part-payment of this debt. A Hindu must be conceived in the womb with a sacrifice: learn to eat with a sacrifice ; begin the acquisition of knowledge with a sacrifice ; marry with a sacrifice, and die with a sacrifice. As regards the debt to the Rishis due for learning, the study of the Vedas leads to that of the Vedangas (branches of the Vedas), grammars, astronomy, music, medicine, and warfare. The debt due to the forefathers for perpetuating the family name leads to the practice of securing substituted sons of whom the custom of adoption alone is now prevalent. The Civil law of the Hindus is at every stage influenced by the principle of three debts. As regards the details of the debt of family institution, the Hindu Law enjoins various duties, such as, maintaining dependent members of the family, adopting a son, going to pilgrimage, living preferably in joint family and the like.

These presumptions have been so utilised that whenever two constructions of a text are possible, one tending to the discharge of one or other of the three debts, and the other inconsistent with such discharge, the former construction is to be adopted and not the latter.

The pervading influence of the family institution amongst the

Hindus is very conspicuous. Primarily the relationship is by blood but the tie is extended in various other ways. Membeis aie conjoined by the tie of relationship as well as of religious duties. When a son is born, a father has to perform the Putreshti Yagya and, on his death, his son performs the Pitri Yajna (Sraddha). In the performance of religious sacrifices, the father, son, wife and, in fact, all the members of the family, and, in some cases, all persons belonging to the same *Gotra* and *Pravara* join together. Even a Sudra servant belonging to the family is regarded its co-member and Jaimini in connection with the rule as to the giving away of one's entiie possessions lays down the principle ; "That a Sudra (servant) cannot be given away, for he is required by the Shastras for subserving the purposes of religion." [Jaim. VI. vii. 6] **शूद्रश्च धर्म्मशास्त्रत्वात्।** He concludes the discussion by saying that the reason why a Sudra is debarred from saciificial acts is that he is not open to teaching Foi some purposes even the preceptor and the pupil are regarded as members of the family. Thus the Hindu conception of a family is very wide indeed.

CHAPTER VIII

INTERPRETATION OF HINDU LAW BY BRITISH COURTS

It has been shown in the preceding chapter how Hindu Law has been interpreted by Jimutavahana, Vijnaneshwara and other ancient writers and commentators. Let us now consider how Hindu Law has been interpreted by the British Indian Courts. In spite of the fact that they did not know the difficult and obstruse classical Sanskrit language and the Mimansa principles of interpretation, couched in Sanskrit, they have discharged their duties fairly well. At places they have erred in construing certain texts which will now be considered. But the mistakes notwithstanding, the cases decided by them, lay down authoritative law.

SECTION 1. LAW RELATING TO HINDU USAGES AND CUSTOMS

It has already been shown that family and tribal as well as local customs relating to matters of *Pyayoga* and *Viniyoga*, *i. e.*, matters of common life, have been recognised as valid both by Jaimini and the Smriti writers. Jaimini has also tried to maintain uniformity by means of Holaka maxim as regards the religious institutions of the Hindu community. The two Adhikaranas of Jaimini—the Padartha Prabalya Adhikarana and the Holaka Adhikarana as regards custom are relevant and lead to important results as given below :

Customs in harmony with the Vedas prevail.

Only those local, family and tribal customs can prevail which are in consonance with the general principles of the Vedic law. Therefore, local customs and those belonging to particular sections of the community must be critically examined so that they may not jeopardise the general guiding rules of the society. The following cases are in harmony with those principles as laid down in the Mimansa Shastra :

Decided case agrees with the Mimansa principles.

A custom is a rule which, in a particular family or in a particular district has, from long usage, obtained the force of law. It must be ancient, certain and reasonable, and being in derogation of the general rules of law, must be construed strictly (*a*). A custom which

(*a*) *Hurpershad* v. *Sheo Dayal* 3. I. A. 259, 26 W. R. 55.

has never been judicially recognised cannot prevail against distinct authority (*b*). If it is contended that the succession to property is regulated by any special family custom, that custom ought to be alleged and proved with distinctness and certainty (*c*). When amongst the Hindus some custom different from the normal Hindu Law and usage of the country in which the property is located and the parties reside, is alleged to exist, the burden of establishing its antiquity and invariability is placed on the party averring its existence, and it should be proved by clear and unambiguous evidence above suspicion (*a*).

The Mimansakas have clearly established by the Holaka maxim the condition that a custom or usage should be reasonable and certain and that it must be of some standing in order to be valid by the Padartha Prabalya maxim; and the Drishtahetu maxim virtually requires that an usage in order to be valid must not be based on any corrupt motive, but it must be reasonable (*e*). These principles have been laid down in the following decided cases :

In order that a Hindu custom may have the force of law, it must be shown to have existed from time immemorial (*f*). In the Hindu system a well defined usage acquires the force of law (*g*). The prevalence in any part of India of a special course of descent in a family, differing from the ordinary course of descent in that place, stands on the footing of usage or custom of the family, capable of attaching and of being destroyed equally, whether the property be ancestral or self-acquired (*h*). Where a custom is proved to exist, it supersedes the general law, but the general law still regulates all beyond the custom (*i*). Custom not allowing adoption may govern a family not subject to Hindu Law. Even in a Hindu family there might be a custom barring inheritance by adoption (*j*). As regards immoral usages the wide rule is laid down in the Drishtahetu Adhikarana to the effect that, if any gross motive be seen to underlie a Smriti text, that text is not good law, *a fortiori* usage based on immoral motives is not fit for enforcement (*k*).

Custom is transcendant law. In the third stage of the development

(*b*) *Narasamai* v *Balarama Charlu* 1 M H. C R. 420.

(*c*) *Seruman Umah* v *Palatnan* Vittil Marya Coothy Umah 15 W. R 47 (P. C); see also 17 W. R. 553 (P. C); 14 M I. A 570; 5 I. A. 87; 1 All. 688.

(*d*) *Bhagwandas Tejmal* v. *Rajmal* 10 B H C. R. 241.

(*e*) K. L. Sarkar's Mimansa Rules of Interpretation p 464.

(*f*) *Luchmal Lal* v. *Mohan Lal Bhaja* 16 W. R 179.

(*g*) *Gunga Huree* v. *Raghabram* 23 W. R. 131.

(*h*) *Surenaranath* v. *Heeroomonee* 10 W. R. 35 (P. C.); 12 M. I. A. 81.

(*i*) *Neelkristo Deb* v *Beerchunder Thakur* 12 W. R 21 (P C); see also 5 All 512.

(*j*) *Raja Bishanath Singh* v. *Ram Charan Mazumdar* S. D. A. 1850, p. 20. See *Fanindra Deb Raikat* v. *Rajeshar Das* 11 Cal. 463; 12 I. A. 72.

(*k*) *R.* v. *Karsan* 2 B. H. C. R. 117; *R.* v. *Mandhar* 5 B. H. C. R. 17; *Uji* v. *Hathi* 7 B. H. C. R. 133; *Narayan* v. *Laving* 2 Bom. 140; *Mathura* v. *Esu* 4 Bom. 545; *Chinna Ummayi* v. *Tejarai Chetti* 1 Mad. 168.

of Hindu Law, the first two being the period of Sruti and Smriti, the same causes, *viz.*, expansion and growing needs of the Aryan community necessitated the recognition of a new source of law. By the further advance of time, the Smritis had ceased to satisfy the growing needs of men. Due to the changing conditions of their life, and as the works composed at the time did not command the same respect as the old Smritis, people turned to respectable persons of their community for guidance. Precept was not considered enough and people had to be guided by example. Thus came the authority of *Sadacharya*, the practice of good men which in course of time developed into custom. But the difficulty arose about reconciling certain bold excesses and trangressions of written law with the accepted authority of Smriti and Sruti. These relate to the stories about Prajapati, Indra, Vasistha, Draupadi and, *etc.* Apastamba justified these by suggesting that the great men of antiquity were possessed of superior human powers and as such were not subject to the same limitations as ordinary human beings. Kumarila adopts the bolder course. He explains the instances of transgression by treating some of the stories as more or less allegorical and others he puts in the light that renders them less objectionable. Again as regards the practice of the men of lore, Kumarila unhesitatingly declares that when we find any such practice distinctly contrary to law as laid down by the Sruti and the Smriti, we cannot accept it as authoritative, and his conclusion about the authority of precepts of good men appears to be that it is not all that a good man does that should be accepted as *Dharma*. It is only what he does and regards as *Dharma* that is to be so accepted. यद्दार्याः क्रियमाणं प्रशंसन्ति स धर्मः ।

Thus it is clear that originally only practices of good men were recognised as authority and that they were not in opposition to the provisions of Sruti and Smriti Laterly, however, the study of Hindu Law would disclose that the centre of gravity of the authority due to the progressive spirit of our law shifted to one's own conscience.

आत्मनस्तुष्टिः [Manu] स्वस्य च प्रियमात्मनः [Yajn.]

It was only when the period of Nibandhas or digests and commentaries set in motion that custom began to be more and more recognised. Still the dictum remained that custom should be regarded as of equal authority to the Sruti itself.

देशाचारस्तावँदाद्रौ विचिन्त्या ।
यस्मिन् देशे या स्थितिः सैव कार्या ॥

Thus we have seen that at least up to the eighth century, custom was relegated to a very subordinate position. Mayne has also arrived at the same conclusion. He propounds the theory that the groundwork of Hindu Law is ancient custom which existed prior to Brahmanism. *He observes* "My view is that Hindu Law is based upon immemorial customs which existed prior to and independent of Brahmanism ; that when the Aryans penetrated into India they found a number of usages, either the same as, or not wholly unlike, their own, that they accepted these with or without modifications rejecting only those which were incapable of being assimilated, *e. g.*, polyandry, *etc.* ; that when Brahmin writers turned their attention to law, they first stated the facts as they found them without attaching them any religious significance, and that the religious element subsequently grew up and entwined itself with legal conceptions and then distorted them in three ways : *Firstly* by attributing pious purposes to acts of purely secular nature ; *secondly*, by accomodating these acts to the rules and restrictions suitable to the assumed pious purpose, and *thirdly*, by gradually altering the customs themselves so as to further the special subjects of religion or policy favoured by Brahmanism." Mayne further observes, "If I am right in supposing that the great body of existing law consists of ancient usages more or less modified by Aryan or Brahmanical influence, it would follow that a mere fact that a custom was not in accordance with a Brahmanical .code, would be no reason whatever why it should not be binding upon those by whom it was shown to be observed. This is admitted in the strongest terms by the Brahmanical writers themselves." Mayne says that *immemorial usage is transcendent law*, and that holy sages were knowing that the law is grounded on immemorial customs embraced as the root of all piety and good usages, long established, [I, 108-110]. It may be said that Sir William Jone's translation of the verse in Manu I, 108 which was approved by Dr. Sarvadhikari (II Ed. 854) and by Mukerjee, J., in *Rajani Nath* v. *Nitai* (*a*) and by others, is an error. Dr. Buhler and Dr. Jha have given the correct translations. Dr. Buhler (in S. B. E Vol. 25, 27) says : "The rule of conduct is transcendent law whether it be taught in the revealed texts or in the sacred tradition: hence a twice-born man who possesses regard for himself should be always careful to follow it." Dr. Jha in his Manu Smriti Vol. I, Part I, p. 149 says: "Morality (right behaviour) is highest dharma, that which is prescribed in the Sruti and laid down in the Smriti. Hence the twice-born person, desiring the welfare of his soul should be always intent upon right behaviour." The reference is

(*a*) 48 Cal. 643, 715 F. B.

to right behaviour or conduct as laid down in the Vedas and in the Smritis and not to any customs or usages of the place. The verses 107, 110 of Manu Smriti read together establish the correctness of the above translations and have nothing to do with custom or usage in the modern sense.

Mayne also quotes the following verses of Manu [VIII, 41]: "A king who knows the sacred law must enquire into the laws of castes, of districts, of guilds and of families and (thus) settle the peculiar law of each."

जातिजानपदान् धर्मान् श्रेणीधर्मांश्च धर्मवित् ।
समीक्ष्ये कुलधर्मांश्च स्वधर्मं प्रतिपादयेत् ॥

It should be noted that Kulluka voices the accepted theory of the time when he comments that usages are valid if they be not repugnant to the law of God by which he no doubt means the texts of the Vedas as interpreted by the Brahmans. But Mayne says that Manu contemplated no such restriction as is evident by what follows a little after the above passage.

सद्भिराचरितं यत्स्यात् धार्मिकैश्च द्विजातिभिः ।
तद्देशकुलजातीनामविरुद्धं प्रकल्पयेत् ॥ [Manu VIII, 46]
यस्मिन् देशे य आचारो व्यवहारः कुलस्थितिः ।
तथैव परिपाल्योऽसौ यदा वशमुपागतः ॥ [Yaj.]

Mitakshara quotes texts to the effect that even . . . practices expressly inculcated by the sacred ordinances may become obsolete and should be abandoned if opposed to public opinion. Thus, though we do not agree with Mayne, that from the beginning custom was given overriding authority over all other sources, we must admit that the propositions stated by him formed the law since the 8th century onwards.

A question arises as to whether an usage or custom can at all prevail when it is in conflict with an express text of Smriti. The commentators are of opinion that in case of such a conflict the Smriti text must prevail, as the established usage or custom is always presumed to have been based on some lost or forgotten text. When an express text is found opposed to an usage, its propriety is lost and the prevalent usage can no longer be supported as proper. The discussion as given in one of the Adhikaranas of Madhavacharyya's Jaiminiya-nyaya-mala-vistara well supports this proposition. It runs thus :

"In Southern India, there is a custom among the learned of marrying one's maternal uncle's daughter. This custom being *in*

conflict with an express text of Smriti prohibiting such marriage, the question arises whether it can be accepted as good evidence (of conduct approved by sacred law or not). It may be contended that it is good evidence like other established usages, but that is not correct because it is opposed to Smriti. The weight attached to the usage of the learned arises from the inference that it is based on Smriti (although an express text may not be traceable), but when there is an express text opposed to the usage the inference must give way."

यो मातुलविवाहादौ शिष्टाचारः समानवः।
इतराचारवन्मात्वममात्वं स्मार्त्तवाधनात्॥
स्मृतिमूलो हि सर्वत्र शिष्टाचारस्ततोऽत्र च।
अनुमेया स्मृतिः स्मृत्या बाध्या प्रत्यक्षया तु सा॥ [Jaimini Nayamala I, 3, 5.]

It should, however, be observed that this view does not imply that an established usage, where it conflicts with an express text of Smriti, should be condemned by the king. The condemnation proceeds from the broader standpoint of Dharma, which has a religious reference but by reason of the existence of the established usage, conduct in consonance with it must be tolerated though not approved by the king. So Brihaspati says :—

"Local, tribal and family customs wherever they prevail from before must be respected; otherwise, the subjects become agitated, popular disaffection springs up, and the strength of the treasury (of the Government) suffer in consequence; (then giving certain instances of customs condemned by the Smritis, Brihaspati proceeds to observe), by such a conduct those (who pursue it) do not render themselves liable to expiation or punishment;"

देशजातिकुलानां च ये धर्म्माः प्राक् प्रवर्त्तिताः।
तथैव ते पालनीयाः प्रजाः प्रक्षुभ्यतेऽन्यथा॥
जनापरक्तिर्भवति वलं कोषश्च नश्यति
* * * * *
अनेन कर्म्मणा नैते प्रायश्चित्तमार्हकाः

and commenting upon these passages, Viramitrodaya [Ch. IX] observes as follows :

"The author of Madanaratna says that the prescription of punishment and expiation for the performance of such acts in other Smritis applies to localities other than those specified in these texts. We are, however, of opinion that the visible harm such as popular discontent spoken of in the text indicates that the king should in no way inflict any punishment in such a case; but the absence of expiation

has been spoken of with reference to social intercourse, and not with reference to purity in the life to come, for which latter purpose expiation is of course requisite, so that there arises no conflict with other Smritis. When conduct opposed to Sruti and Smriti extends over an entire locality: the sinfulness of the conduct loses its force of obstructing social intercourse (through excommunication), but its force of causing hell (*i. e.* misery after death) remains in tact, because on a consideration of the preamble, the purpose of the texts quoted above being fulfilled on ascribing this meaning to them, it is improper to imagine an absolute want of guilt; hence it has been said by *Apastamba: "Local, tribal and family customs are authoritative when they are not opposed to sacred law."* In the text, *viz.* 'those who follow customs handed down through successive generations and acted upon by predecessors incur no guilt thereby; not so with other people,' the expression 'incur no guilt' means 'do not become liable to excommunication and punishment from king'; otherwise, it becomes difficult to avoid conflict between these two texts"

"The introduction of political considerations is a very noticeable feature of these texts and the commentator therefore contends that although these considerations may be sufficient to induce the king not to punish those who follow these established usages condemned by the Dharmashastras, and although by reason of their wide prevalence no question of social ostracism can possibly arise as a punishment for infraction of Shastric injunctions, yet, in so far as they are opposed to express directions of Dharmashastras, they can at best be tolerated, but not approved. The conclusion, therefore, is that such customs or usages wherever they exist must be tolerated and recognised in the administration of justice but must not be recognised as affording any index of *Dharma* or commendable conduct and encouraged as such. Their Lordships of the Privy Council have laid down in the case of *Collector of Madura* v. *Mootoo Ramalinga* (o) that '*Under the Hindu system of law, clear proof of usages will outweigh the written text of the law.*' There can be little doubt that for all practical purposes, this statement is correct enough, although it may require some qualification, as indicated above, from a standpoint outside the scope of positive law. All that their Lordships should, therefore, be taken to have laid down is that an act or transaction in consonance with an established usage cannot be treated as illegal or void of legal effect merely because it transgresses a written text of Dharama-Shastra, and the position thus understood cannot possibly be doubted or assailed."(*x*)

(o) 12 M. I. A. 397, 436.

(*x*) Dr. Sen's Hindu Jurisprudence p. 17-20

"It should be mentioned that besides local, tribal and family customs, the existence of special customs among commercial classes was also recognised and the king was enjoined to give due weight to them in actions involving their consideration." (x)

SECTION 2. BROAD RULES OF CONSTRUCTION

I. *In Collector of Madura* v. *Mootto Ramalinga Sattupathy* (l) decided by their Lordships of the Privy Council, the following general rules were laid down :

1. *Clear proof of usage will outweigh the written text of the law.*

"The duty of an European Judge who is under the obligation to administer Hindu Law is, not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities, as to ascertain whether it has been received by the particular school which governs the district with which he has to deal, and has there been sanctioned by usage. For under the Hindu system of law, clear proof of usage will outweigh the written text of the law."

2. *No weight should be given to texts from works unknown and of doubtful authority.*

"The industry and research of the counsel in the courts below have brought together a *catena* of texts of which many have been taken from works little known and of doubtful authority. Their Lordships concur with the Judges of the High Court in declining to allow any weight to these."

3. *Sanctioned usage may be evidenced by opinions of Pandits and decided cases.*

"The evidence that the doctrine for which the respondents contend has been sanctioned by usage in the south of India, consists partly of the opinions of Pandits, partly of decided cases. Their Lordships cannot but think that the former have been too summarily dealt with by the Judges of the High Court."

Following the above principles their Lordships observed :— "Upon the whole, then, their Lordships are of opinion that there is enough of positive authority to warrant the proposition that according to the law prevalent in the Dravada country, and particularly in that part of it wherein this Ramnad Zemindary is situate, a Hindu widow, not having her husband's permission, may, if duly authorised by his kindred, adopt a son to him. And they think that positive authority affords a foundation for the doctrine safer than any built upon speculations touching the natural development of Hindu Law, or upon analogies, real or supposed, between adoptions according to the Dattaka form, and the obsolete practice with which that form of

(x) Dr. Sen's Hindu Jurisprudence p. 17-20. (l) 12 M. I. A. 437, 10 W. R. 17.

adoption co-existed, raising up issue to the deceased husband by carnal intercourse with the widow. It may be admitted that the arguments founded on this supposed analogy are in some measure confirmed by passages in several of the ancient treatises above referred to; and, in particular, by the Dattaka Mimansa of Vidya Narainsamy, the author of the Madhavyam; but as a ground for judicial decision these speculations are inadmissible, though as explanatory arguments to account for an actual practice they may be deserving of attention."

What their Lordships lay down in this case may be more fully put as follows :

(a) General texts which must necessarily be more or less obscure are to be construed, more with reference to the questions as to whether the texts have been received by the particular school, and how they have been applied and sanctioned by the usage of the people of that school, rather than with reference to the effect of the verbal construction of the texts.

(b) When a rule of law is positively determined on the basis of such a principle, considerations of analogy, real or fancied, between the texts in question and other texts which have become more or less obsolete should have no weight against such a rule.

(c) In determining the rule of law on the basis of the principle stated above, evidence of opinion of leading and learned men (Pandits) belonging to the community, and that afforded by the judicial opinions of gentlemen concerned in judicial administration should be accepted (*m*).

Therefore, the principles laid down by their Lordships substantially accord with the principles of the Mimansa Shastra. The principle as laid down by Jaimini in the leading Sutra of the Padartha Prabalyadhikarana —'Without reference to causes, usages prevail', is quite similar to principles (a) and (b). The third principle (c) regarding the question of evidence, is in consonance with the principle under the heading *Sistachara* as laid down by the Mimansakas and the Smriti writers.

Some rules of construction have also been laid down in certain other important decisions on the question of interpretation of Hindu Law texts :

II. *A special text or statute forming an exception to a general text or statute should be constructed strictly and applied only to cases falling clearly within it* (*a*).

For instance, where a Hindu widow governed by the Mitakshara school of law, dies without issue leaving *stridhana* property, an adopted

(*m*) K. L. Sarkar's Mimansa p. 444.

(*a*) *Gangadhar Bagla* v. *Hira Lal Bagla* 23 C. L. J. 372, 387-388. per. Mookerjee. J.

son of her husband taken in conjunction with another wife and a son of her husband born of the womb of a third wife inherit, as her husband's sapindas to her *stridhana* property, in *equal* shares.

Bridha Gautama lays down the general rule that an adopted son endowed with excellent qualities and an after-born son are equal sharers. Vasistha introduces an exceptional rule with regard to the inheritances to father's property, *viz.*, "if after he has been adopted, a legitimate son be born, then the dattaka shall obtain a fourth share."

It was held, by their lordships of the Calcutta High Court that this exception must not be extended to property inherited from step-mother. The judges observed :

"Consequently we should not extend its application to cases not only not comprised strictly within its letter, but undoubtedly beyond its true spirit : in this connection we may bear in mind that Hindu jurists, quite as English jurists (*b*) recognise the well known canon of interpretation that a special text or statute forming an exception to a general text or statute should be constructed strictly and applied only to the cases falling clearly within it ; the Mitakshara itself recognises the principle that where an exception exists to a general rule, the exception should be confined within the strictest limits, so as not to encroach unduly upon the rule (*c*)."

III. *The Hindu Law contains its own principles of exposition, and questions arising under it cannot be determined on abstract reasoning or analogies borrowed from other systems of law, but must depend for their decision on the rules and doctrines enunciated by its own law-givers and recognised expounders* (*d*).

In a Calcutta case (*d*) the questions were, *firstly*, whether the expression 'bandhu' would be confined only to those three classes of *bhinna gotra* sapindas that were mentioned in the Mitakshara, or whether any new class of heirs could be introduced under it; and *secondly*, whether the word sapinda should be understood in a wide sense to include every person related by particles of the body, or whether it should be understood in a restricted sense, so as to exclude from inheritance every one related through females beyond the fifth degree, and every one related through males beyond the seventh degree.

It was held, first, that the classes specified by Vijnaneswara cannot be added to; and that the case of *Giridharilal Roy* v. *Government of*

(*b*) *Ebbs* v. *Boulons* (1875) L. R. 10 Ch. App. 479, 484 ; Co. Litt 299 a.

(*c*) *Gangu* v. *Chandra* (1907) 32 Bom. 275 ; *Anandi* v. *Hari* (1909) 33 Bom. 404 ; Dattaka Chandrika Sec. V. 27 ; Mitakshara on Prayaschitta, Ed. Moghe, p. 283 ; यावदपवाधिते अनुपत्ति प्रशमो न भवति तावत्साधनीयम् ।

(*d*) *Ramchandra Martand Waiker* v. *Vinayak Venkatesh Kolkekar* 20 C. L. J. 573, 608-09 (P. C.).

Bengal (*e*) was no authority for the extension.

It was further held that the relation of sapinda ceases for purposes both of marriage and of inheritance after five degrees in case of relationship through females.

"The limitation of five degrees clearly applies and can only apply to the *bhinna gotra* sapindas. But it is contended that this limitation is confined to prohibition in respect of marriage. As has already been observed, a part of the limitation appears to have been applied to the succession of samanagotra sapindas: their Lordships are unable to see on what principle it can be said that the other part relating to kinsmen who are equally sapindas, but belong to a different gotra must be restricted to matrimonial affinity.

In the absence of any authoritative text, their Lordships do not see their way merely on abstract reasoning to displace a view of the law which has received the recognition of the Courts in India and which the District Judge, an officer of great experience and learning says is accepted by "Public opinion."

IV. *Under the Dayabhaga School of Hindu Law a son is the preferential heir to married daughter to the pitridatta ayautuka stridhana property of the mother* (*f*).

The decision depended upon the meaning of the expression *Kunya*, given by Jimutavahana in connection with his quotation from Manu in Ch. IV. Sec. 2, para 16. It appears that Srikrishna and Raghunannan use the term as meaning daughter generally. But from Ch. V of the Dayabhaga it is clear that Jimutavahana used it in the sense of an unmarried daughter.

V. *The principle of Hindu Law, which invalidates a gift other than to a sentient being capable of accepting it, does not apply to a bequest to trustees for the establishment of an image and the worship of the Hindu deity after the testator's death, nor does it make such a bequest void* (*g*).

On a construction of the expression **दाने हि चेतनोद्देशविशिष्टत्यागा-देव** (Dayabhaga Ch. I. Para 21) and comments thereon, read with Shoolapani's and Raghunandana's discussions as to the nature of *sraddh* and gift, *etc.*, it was held that the above principle of Hindu Law does not apply to such a bequest.

"The view that no valid dedication of property can be made by a will to a deity, the image of which is not in existence at the time of the death of the testator, is based upon a double fiction, namely, first, that a Hindu deity is for all purposes a juridical person, and, *secondly*, that a dedication to the deity has the same characteristics and is subject to the

(*e*) 12 M. I. A. 448. (*f*) *Prosann Kumar Bose* v. *Sarat Shoshi Ghosh* (1908) 36 Cal. 86 (F. B.).
(*g*) *Bhupati Nath Smritirtha* v. *Ram Lal Maitra* 37 Cal. 128 (F. B.)

same restrictions as a gift to a human being. The first of these propositions is too broadly stated, and the second is inconsistent with the first principles of jurisprudence."

"The Hindu Law recognises dedications for the establishment of the image of a deity and for the maintenance and worship thereof. The property so dedicated to a pious purpose is placed *extra-commercium* and is entitled to special protection at the hands of the sovereign whose duty it is to intervene to prevent fraud and waste in dealing with religious endowments."

SECTION 3. INTERPRETATION OF SPECIFIED TEXTS

The principles of interpreting text-law do not shut out the necessity of verbally construing the Sanskrit text of the Hindu Law. Where a certain text-book has been acted on, its words must be construed; specially when it is a regular treatise of comparetively recent times, such as, the Dayabhaga, the Mitakshara, the Mayukha, the Viramitrodaya, *etc.* The said principles rather open the door to the subject of verbal construction. The Privy Council as well as the different High Courts in India have resorted to such verbal constructions in settling particular points, of which some illustations are given below:

In *Balwant Singh* v. *Rani Kishori* (*i*), their Lordships of the Privy Council construed these texts: (I) Clause 27, Sec. 1, (II) Clause 21, (III) Clauses 9 and 10 of Sec. 5 and (IV) Clauses 1 and 2 of Sec. 4 Ch. 1 of the Mitakshara as translated by Colebrooke:

I. Clause 27, Sec. 7, Ch. 1 runs as follows:

" Therefore, it is a settled point, that property in the paternal or ancestral estate is by birth, [although] the father had independent power in the disposal of effects other than immovables, for indispensable acts of duty and for purposes prescribed by texts of law, as gifts through affection, support of the family, relief from distress, and so forth: but he is subject to the control of his sons and the rest, in regard to the immovable estate, whether acquired by himself or inherited from his father or other predecessor; since it is ordained, " though immovables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They who are yet unbegotten, and they who are still in the womb, require the means of support, no gift or sale should therefore, be made."

तस्मात् पैतामहे च द्रव्ये जन्मनैव स्वत्वम् । तथापि पितुरावश्यकेषु धर्मकृत्येषु वाचनिकेषु प्रसाददान कुटुम्बभरणापद्वि मोत्तादिषु च स्थावरव्यतिरिक्तद्रव्य विनियोगे स्वातन्त्र्यमिति स्थितम्। स्थावरे तु स्वार्जिते पित्र्यादि प्राप्ते च पुत्रादि पारतन्त्र्यमेव ।

(*i*) 20 All. 267.

स्थावरं द्विपदं चैव यद्यपि स्वयमर्जितम् ।
असम्भूय सुतान् सर्वान्न दानं न च विक्रयः ॥
ये जाता येऽप्यजाताश्च ये च गर्भे व्यवस्थिताः ।
वृत्तिं च तेऽभिकांक्षन्ति न दानं न च विक्रयः ॥ इत्यादि स्मरणात् ।

II. Clause 21, rather that part of Clause 21, which forms Vijnaneshwara's explanatory note to two Smriti passages, one from Yajnavalkya himself, and which is this:

"They both relate to immovables which have descended from the paternal grandfather." तत् पितामहोपात्तस्थावरविषयम् ।

III. Clauses 9 and 10 of Sec. 5 run as under:

"So likewise, the grandson has a right of prohibition, if his unseparated father is making a donation, or a sale, of effects inherited from the grandfather: but he has no right of interference, if the effects were acquired by the father. On the contrary, he must acquiesce because he is dependent."

"Consequently the difference is this: although he has a right by birth in his father's and in his grand-father's property, still since he is dependent on his father in regard to the paternal estate, and since the father has a predominant interest as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property: but since both have indiscriminately a right in the grand-father's estate, the son has the power of interdiction [if the father be dissipating the property]."

तथा विभक्तेन पित्रा पैतामहे द्रव्ये दीयमाने विक्रीयमाणे वा पौत्रस्य निषेधेऽप्यधिकारः । पित्रर्जिते तु न निषेधाधिकारः तत्परतन्त्रत्वात् । अनुमतिस्तु कर्त्तव्या । तथाहि पितृके पैतामहे च साम्यं यद्यपि जन्मनैव तथापि पैतृके पितृपरतन्त्रत्वात् पितुः स्वार्जकत्वेन प्राधान्यात् पित्रा विनियुज्यमाने स्वार्जिते द्रव्ये पुत्रेणानुमतिः कर्त्तव्या । पैतामहे तु द्वयोः स्वाम्यमविशिष्टमिति निषेधाधिकारोऽप्यस्तीतिविशेषः ।

IV. Clauses 1 and 2, Sec. 4 are as follows:

"The author explains what may not be divided, 'whatever else is acquired by the co-parcener himself, without detriment to the father's estate, as a present from a father, or a *gift* at nuptials does not appertain to the co-heirs. Nor shall he, who recovers hereditary property, which had been taken away, give it up to the parceners; nor what has been gained by science."

"*That which had been acquired by the co-parcener himself* ithout any detriment to the goods of his father or mother or which

has been received by him from a friend, or obtained by marriage, shall not appertain to the co-heirs or brethren. Any property, which had descended in succession from ancestors, and had been seized by others, and remained unrecovered by the father and the rest through inability or for any other cause, he, among the sons, who recovers it with the acquiescence of the rest, shall not give up to the brethren or other co-heirs: the person recovering it shall take such property."

मातापित्रोर्द्रव्याविनाशेन यत्स्वयमर्जितं मित्रसकाशात् यल्लब्धं विवाहलब्धं दायादानां भ्रातृणां तन्न भवेत् । इत्यादि [Mitakshara]

In the above-noted case the plaintiffs relied on clause I with the contention that an alienation by a father of self-acquired property is void, but the defendants relied on Clauses II, III and IV which were contradictory to Clause I:

Their Lordships after considering the contradiction decided the case as follows:

The effect of Clause 27 is that it does not negative the father's right to alienate his self-acquired property, but that it only shows that his alienation may not be morally right. In fact, their Lordships adopt Sir Francis Macnaghten's opinion on the point, which is also shown to have been adopted by Sir Thomas Strange, and substantially acted on by the High Courts of Bengal and Allahabad. Thus their Lordships do not exclusively proceed on the construction of the text, but also partly follow the principle laid down in the case of the Collector of Madura. This principle, however, which is, in substance, that of the Padartha Prabalya Adhikarana, is perhaps not quite legitimately applicable to the case. For here, there is a well recognised text book of law, the Mitakshara, governing the parties which is pretty full and explicit. The construction of the text of this book should alone be decisive of the question raised.

The construction of these texts by their Lordships is in accord with the Mimansa rules. At the outset, the words quoted by their Lordships from clause 21 section 1 should be eliminated from consideration, for the simple reason that these words are the words of the Purvapakshin (the party whose views are refuted) which are to the effect that the property is by succession and not by birth. Then coming to the text mainly in question, that contained in clause 27 section 1, is not obligatory by the well-known Mimansa rule that what is recited as a reason does not of itself form an obligatory text. This principle is laid down in Hetubannigadadhikarana. This Adhikarana no doubt does say that the principal clause, in support of which a reason is given becomes bad for the recital. But it clearly says that what is recited as the reason is not itself obligatory. By the application of this maxim

to clause 27 it is clear that the clause "since it is ordained . . . . be made," has not the force of a Vidhi. Then, there remains the clause "But he is subject to . . . . or other predecessor," which is to be read with the opening clause "property in the paternal or ancestral estate is by birth," by the Ekavakyata principle becomes subordinate and incidental.

Then against the above words, clauses 9 and 10 of section 5 are to be considered. Clause 27, treats ancestral and self-acquired property in general terms while clauses 9 and 10 constitute a special rule, making a distinction between ancestral and self-acquired property, Therefore, by the maxim, called the Samanya Vishesha Adhikarana, the special clause prevails over the general. By Apachheda maxim also clauses 9 and 10 of section 5 prevail over clause 27. By this maxim when there is a conflict between two passages in the same work the passage that comes after bars the one that precedes. Thus both by the Samanya Vishesha maxim and the Apachheda maxim, the clauses which lay down that, in respect of the self-acquired property of the father, the sons have no power to interfere with the disposal of it by the father, must prevail. Thus the right that a son acquires by birth in the father's self-acquired property is reduced only to a claim of maintenance out of it, so long as the father does not dispose of it. Jimutavahana also explains this claim of the son to be a moral or spiritual duty on the part of the father.

The decision as to the validity of the adoption of an only son not in accord with Mimansa rules.

In *Sri Balusu Gurulinga Swami* v. *Sri Balusu Ramalakshmamma* and *Radha Mohan* (representative of Beni Prasad) v. *Hardai Bibi* (x) the question as regards the validity or otherwise of the adoption of an only son turned upon the interpretation of the following texts (Vasistha) :—

(1) Man formed of uterine blood and virile seed proceeds from his mother and his father as an effect from its cause.

(2) Therefore the father and the mother have power to give, to sell and abandon their son.

(3) But let him not give or receive in adoption an only son.

(4) For he must remain to continue the line of ancestors, [as he saves the man (from *put* or hell)].

(5) Let a woman neither give or receive a son except with her husband's permission.

शुक्रशोणितसम्भवः पुरुषो मातापितृनिमित्तकस्तस्य प्रदानविक्रय परित्यागेषु मातापितरौ प्रभवतः नत्वेकं पुत्रं दद्यात् प्रतिगृह्णीयाद्वा स हि सन्तानाय पूर्वेषाम् ।

(x) 26 I. A. 113, 21 All. 460, 22 Mad 398, 9 M. L. J. 67, 1 Bom. L. R. 226, 3 C. W. N. 427.

The text of Saunaka is also important on this point : "One having an only son should never give him in adoption ; one having sons should give a son (in adoption) with every effort."

नैकपुत्रेण कर्त्तव्यं पुत्रदानं कदाचन ।
बहुपुत्रेण कर्त्तव्यं, पुत्रदानं प्रयत्नतः ॥

The passage of the Mitakshara or the Dattaka Mimansa bearing on the point is not of importance as their authors professedly follow the texts of Vasistha and Saunaka. Manu has not said anything directly on the point. These passages will be considered later on.

Applying the Mimansa rules, excepting the last sentence, the whole may be resolved into two main parts : the first part consists of the first two sentences laying down the Vidhi that parents have the power of selling their son : the second consists of the next two sentences laying down that the father must not either give away or receive an only son. In terms of the Mimansa rule as to Vidhi and Paryudasa, the first proposition forms the general (rule *Samanya* Vidhi) and the latter an exception (*Paryudasa*). The result is that, a man can give away his son, except when that son is the only son. Each of the above two propositions can be divided into two parts : one mandatory and the other a reason for it. The general Vidhi laying down the rule, that a father has power to give away his son, is supported by the reason that he, along with his wife, is the cause of his birth. The reason is an Arthavada or a mere explanation. The exceptional clause also is supported by a reason, and that reason too is an Arthavada. Some allege that the statement of a reason vitiates the Vidhi in support of which the reason is stated. If it were so, then, in this case, not only the exception would go out, but even the general rule laying down the power of the parents to give away their sons. There is no valid basis for the above proposition, the Drishta Adhikarana states that a corrupt reason invalidates a Vidhi. By Hetubannigadadhikarana the reason stated is not to be taken as a condition precedent of the Vidhi, it is no more than a mere recital. The question, however, yet remains, whether the particular character of the reason stated in this case for the exception does not reduce to a nullity the exception itself. The reason "that an only son is required to continue the line of ancestors of the family in which he has been born," is not a corrupt one within the meaning of the Drishtahetu Adhikarana. Their Lordships of the Privy Council held in the above case that the proposition prohibiting the giving or taking in adoption of an only son is a mere religious or moral prohibition, and has not the force of positive law.

It has been said before that Drishtahetu Adhikarana takes exception to some worldly reasons, and would not permit such worldly

reasons to serve the purpose of proper spiritual reasons. This Adhikaran relates mostly to the positive Smriti Law, so it maintains the superiority of spiritual reasons with regard to the positive law. Vijnaneshwara and Jimutavahana also hold that when a spiritual rule clashes with an established rule of the Vyavahara Law, the former would be taken as merely a monitary precept. Sankara Bhatta while dealing with the principal Badha lays down that, where an Utpatti Vidhi conflicts with a positive Smriti Vidhi, the latter bars the former. These authors do not even say that when a spiritual rule and a rule of Vyavahara law harmonise with a spiritual reason, both are to be rejected as being monitary precepts. Vijnaneshwara says that according to Gautama's Smriti text, a man has a proprietary right to a thing which he acquires for secular use. A priest requires a thing by officiating at a sacrifice. So he has a right of property to the thing by the positive (Vyavahara) law. But there is a rule of the spiritual law, according to which, he should not have acquired this property. Vijnaneshwara says that this spiritual rule cannot be taken to interfere with the rule of positive law. It must be taken to be a mere religious precept, for the breach of which the man may expiate in the best way he can, but not by losing his proprietary right. This is a case of conflict between the positive and the spiritual law (*a*).

Similarly, the well-known rule of *Factum valet* of Jimutavahana may be referred to. He has clearly laid down that a person can use his self-acquired property in any way he pleases. But a text of Vyasa says, a man should not sell or give away immovables and bipeds acquired by himself. He holds it to be a moral precept and a transaction done in violation of it must hold good. This is the conflict. But in the present case of prohibition of the gift of an only son it is admittedly a matter of the positive (Vyavahara) law, coupled with the spiritual reason. Both are concordant and there is no clash. Therefore, according to Jaimini or Vijnaneshwara and Jimutavahana the said proposition cannot be treated as merely monitary. Mere spiritual reason cannot reduce a Vyavahara Vidhi to a monitary precept for in that case the rules of succession laid down by Jimutavahana would all be reduced to mere monitary rules.

Their Lordships of the Calcutta High Court did not well consider Mr. Justice Mitter's observation in the case of *Rajah Upendra Lal* v. *Sreemati Rani Prasanna mayi* (*b*).

"The institution of adoption as it exists among the Hindus is essentially religious institution. It originated chiefly, if not wholly, from motives of religion; and an act of adoption is to all intents and purposes a religious act, but one of such a nature that its religious and

(*a*) K. L. Sarkar's Mimansa Rules p. 456,

(*b*) I B. L. R, 221.

temporal aspects are wholly inseparable." 'By a man destitute of male issue' one, says Manu, 'must be substituted for a son of some one description for the sake of the funeral cake, water and solemn rites.' The subject of adoption is, therefore, inseparable from the Hindu religion itself and all distinction between religious and legal injunctions must be inapplicable to it.

Vijnaneshwara follows Vasistha's text and says: "So an only son must not be given [nor accepted]." For Vasistha ordains "Let no man give or accept an only son." (Colebrooke's Mitakshara Ch. I. Sec. 11. Para 11). **तथा एकपुत्रो न देयः । न त्वेवैकं पुत्रं दद्यात् प्रतिगृह्णीयाद्वा । इति वशिष्ठस्मरणात् ।**

The meaning of the word '*na deyah*' which has been translated into 'must not' has been suggested to be 'should not.' The words of Vasistha form a part of the same sentence, so the force of the word should be determined by the principle of Vakya (reading together). This being so the proper force of the said words is 'must not' and not 'should not.'

Let us now consider the text of Saunaka as considered by Nanda Pandit in the Dattaka Mimansa. The words are '*nakarttavyam*' 'not to be made,' might, no doubt, be taken to mean 'should not be made.' But in that case the Vakya principle will be violated. The word '*Kadachana*' which means 'in no case,' read with the words, 'should not be made,' makes the sense to be one of unqualified prohibition.

The Mimansa principles thus show that the interpretation put on the texts in consideration by their Lordships of the Privy Council is not correct; whatever the fact may be, the decision of the highest judicial tribunal has put an end to all discussions upon it (*c*).

Adoption of mother's sister's son and that of daughter's and sister's son invalid.

In *Bhagwan Singh* v. *Bhagwan Singh* (*d*) their Lordships of the Privy Council decided the following matters :—

(1) The adoption of a mother's sister's son by a Hindu of any of the three regenerate classes, Brahman, Kshattriya, and Vaishya, equally with the adoption of a daughter's son, or a sister's son is contrary to law and void. The ancient texts condemning such adoptions are not only admonitions, but have been judicially decided to be prohibitions of law for such a length of time that it is not now competent to a Court to treat them as open to question in this respect.

(2) The Judgment in the *Collector of Madura* v. *Mutoo Ramalinga Sathapathy* gives no sustenance to the conclusion that in order to bring a case under any rule of law laid down by recognised authorities for Hindus generally, evidence must be given of actual events to show

(*c*) K. L. Sarkar's Mimansa Rules p. 459.

(*d*) 26 I. A. 153, 21 All. 412.

that, in point of fact, the people subject to that general law, regulate their lives by it.

The first point as decided by their Lordships and the position taken by them is unquestionable. 'If texts as to the character of which doubts might be raised touching the question whether they were obligatory or recommendatory, have been judicially acted upon for a long time as obligatory, then even by the Mimansa principle laid down in the Padartha-Prabalya maxim their obligatory character cannot be denied. The principal text which was the subject of consideration in this case is that of Saunaka, in a part of which the rule regarding the adoption of an only son also occurs.'

Nilakantha by applying Mimansa rules says that Saunaka does not recommend the exclusion of such relations from adoption. But Sakala's text is stronger to show that these relations are ineligible for adoption. Dattaka Mimansa and Dattaka Chandrika, the leading treatises on adoption, held in high esteem from a long time, submitted to the authority of Sakala. However, the meaning of Sakala's text should not be extended beyond its words; and, also the extensive effect ascribed by some to the words 'having the reflection of a son' in the passage of Saunaka should not be tacitly accepted as proper. The operation of that text cannot be extended by analogy or on the basis of the reasoning that may be supposed to underlie it. Sakala would except daughter's son, sister's son and the son of mother's sister. The exception cannot be extended to the son of mother's sister, nor to the son of any woman whose father was of the same gotra with the would-be adopter. Such an extended exclusion was sought to be introduced by the words "having smelt the forehead of the child, and having with clothes and the like adorned the boy bearing the reflection of a son, *etc.*" These words only go to show how the adopter is to do certain acts towards the boy, and how the boy would appear when these acts are being performed, *viz.*, that he would *bear the reflection of a son.* This clause cannot be detached from its place to make it serve the purpose of a Vidhi to the effect that he should be born of the womb of a female other than of the same Gotra (*a*). Nanda Pandit's dictum starts a new idea which is not to be found in Saunaka's passage. But this idea is against Nanda Pandit's own argument against Medhatithi that the question of procreation has nothing to do with the question of the substitution of a son. Their Lordships of the Privy Council in the case of *Bhagwan Singh* v. *Bhagwan Singh* held that the adoption of the mother's sister's son is invalid and also a *fortiori* held the adoption of the daughter's son and sister's son to be invalid among the three higher classes.

(*a*) See Mandlik's Book p. 414. ll. 7-18.

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